# No. 55104-3-I

# DIVISION I OF THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

RUD OKESON, DORIS BURNS, WALTER L. WILLIAMS and ARTHUR T. LANE, individually and on behalf of the class of all persons similarly situated,

Respondents,

VS.

## THE CITY OF SEATTLE,

Appellant.

# BRIEF OF APPELLANT, THE CITY OF SEATTLE ON ONE PERCENT FOR ART

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# TABLE OF CONTENTS

			Page(s)
I.	ASSI	GNMENTS OF ERROR	1
	A.	Assignments of Error	1
		1. Ordinance partly invalidated	1
٠		2. City Light art restricted	2
	В.	Issues Pertaining to Assignments of Error	3
		1. Invalidation of ordinance	3
		2. Restriction on use of art	4
II.	STAT	EMENT OF THE CASE	6
	A.	History leading to trial	6
		1. Before the Supreme Court Okeson decis	ion6
		2. General government function theory add	led7
		Summary judgment motion: One Percen     Art	
	B.	First phase of trial: Is art a governmental function	on?10
	C.	After the art trial	28
III.	SUMN	MARY OF ARGUMENT	29
IV.	ARGU	JMENT	30
	A.	The standard of review30	
	B.	Seattle's art ordinance is presumed valid	
	C.	Conflict with a statute is not easily found33	
	D.	First class charter cities are given deference to c out their broad legislative powers	arry 34

E.	Seattle has broad authority to operate a utility
F.	The trial court's apparent rejection of the City's broad authority to set Citywide policy is erroneous3
G.	The trial court's limits on City Light's use of art are too restrictive and are unsupported by the record4
H.	The decision cannot be reconciled with the evidence4
I.	For want of a placard, was the art lost?4
J.	The trial court's order to transfer funds is unreasonable48

1 1 3 1

#### TABLE OF AUTHORITIES

Page(s)

CASES Adcox v. Children's Orthopedic Hospital, Alabama Power Co. v. Alabama Public Service Comm., 359 So.2d 776 (1978).......43 Behavioral Sciences v. Great West, Belas v. Kiga, Branson v. Port of Seattle, Bulman v. Safeway, Inc., 96 Wn. App. 194, 198-99, 978 P.2d 568 (1999), rev'd on other grounds, 144 Wn.2d 335......32 Covell v. City of Seattle, 127 Wn.2d 874, 879, 905 P.2d 324 (1995)......11, 38 DCR, Inc. v. Pierce County, 92 Wn. App., 660, 670, 964 P.2d 380 (1998), review denied, 137 Wn.2d 1030 (1999), cert. denied, 529 U.S. 1053 (2000)......30 Des Moines Marina Assn. v. Des Moines, Earle M. Jorgensen Co. v. Seattle, 99 Wn.2d 861, 867, 665 P.2d 1328 (1983), cert. denied, 464 U.S. 982 ......35

Ehrlich v. City of Culver City, 12 Cal.4 <sup>th</sup> 854, 866, 911 P.2d 429, 50 Cal.Rptr.2d 242, cert. denied, 519 U.S. 929 (1996)
Faxe v. Grandview, 48 Wn.2d 342, 351-52, 294 P.2d 402 (1956)
Heinsma v. City of Vancouver, 144 Wn.2d 556, 561, 29 P.3d 709 (2001)33, 34, 35
Hite v. Public Util. Dist. No. 2, 112 Wn.2d 456, 458-59, 772 P.2d 481 (1989)
Jewell v. WUTC, 90 Wn.2d 775, 585 P.2d 1167 (1978)
Kightlinger v. Pub. Util. Dist. No. 1, 119 Wn. App. 501, 81 P.3d 876 (2003), review granted, 152 Wn.2d 1001
Margetan v. Superior Chair Craft Co., 92 Wn. App. 240, 245, 963 P.2d 907 (1998)
Okeson v. Seattle, 150 Wn.2d 540, 78 P.3d 1279 (2003)
Perry v. Costco Wholesale, Inc., 123 Wn. App. 783, 792, 98 P.3d 1264 (2004)
Rabon v. City of Seattle, 135 Wn.2d 278, 287, 957 P.2d 621 (1998)
State v. Oklahoma Gas & Electric Co., 536 P.2d 887 (Okla. 1975)
Tacoma v. Taxpayers, 108 Wn.2d 679, 694, 743 P.2d 793 (1987) 9, 12, 35, 36, 38, 44, 49
Teter v. Clark County, 104 Wn.2d 227, 234, 704 P.2d 1171 (1985)
Winkenwerder v. Yakima, 52 Wn.2d 617, 622, 328 P.2d 873 (1958)

WUTC. v. Pacific Power & Light Co., 7 P.U.R.4th 470 (WUTC Nov. 20, 1974) STATUTES	43
7 P.U.R.4th 470 (WUTC Nov. 20, 1974)	43
OTATYYODO	
SIAIUIES	
RCW 28B.10.027	34, 37
RCW 35.92.050	
RCW 43.09.210	6, 7, 28
RCW 43.17.200	34
RCW 43.46.090	34
RCW 80.04.440	7
RCW 80.28.010	35
CONSTITUTION	s
Wash. Constitution, art. XI § 10	34
Wash. Constitution, Art. XI § 11	33
ORDINANCES	
SMC § 20.32.020030	37
SMC § 20.45.010050	34
SMC Ch. 30.32	
	RCW 43.09.210  RCW 43.17.200  RCW 43.46.090  RCW 80.04.440  RCW 80.28.010  CONSTITUTION  Wash. Constitution, art. XI § 10  ORDINANCES  SMC § 20.32.020030  SMC § 20.45.010050

# **MISCELLANEOUS**

Black's Law Dictionary 1537 (7th ed. 1999)	. 31
WAC 480-100-223	<b>, 4</b> 4

This appeal is from a bench trial conducted in two phases in April-June 2004. By stipulation, the only issue being appealed is the decision on the City's One Percent for Art program, which is funded by capital improvement projects of City departments. First, the court, without giving a basis, invalidated Seattle's 30-year-old art ordinance, as applied to the City Light department. Second, the trial court allowed City Light to continue funding art, but only within narrowly drawn guidelines that reject much of Seattle's uncontroverted evidence of the utility's purposes.

#### I. ASSIGNMENTS OF ERROR

## A. Assignments of Error

#### 1. Ordinance partly invalidated

- 1. The trial court erred in declaring that Seattle's One Percent for Art ordinance (SMC 20.32.010-.050), enacted in 1973, is invalid as applied to City Light. Conclusion of Law 11 (App A); Judgment ¶¶ 2.A-2.B (App B).
- la. The trial court erred in requiring City Light to take back money already paid to the Municipal Art Fund for City Light's

<sup>&</sup>lt;sup>1</sup> One issue, involving Sound Transit, had been stayed for later decision. Subsequently, the trial court has permitted plaintiffs to supplement their already amended complaint to add an issue involving biodiesel fuel. The biodiesel fuel add-on is the subject of the City's separate motion for discretionary review in this Court (No. 55800-5-I).

benefit. Conclusion of Law 10; Judgment ¶ 2 and Exhibit E ¶ 6.

## 2. City Light art restricted

- 2. The trial court erred in limiting City Light funds to art projects having a restrictively interpreted "close' nexus to the utility's primary purpose of furnishing electricity to its ratepayers." Conclusions of Law 11, 14; Judgment ¶ 2.C.
- 2a. The trial court erred in finding that much of the City Light money spent by the Office of Arts and Cultural Affairs during 2000-2003 was "spent to benefit the general public, not City Light ratepayers." Finding of Fact 50.
- 2b. The trial court erred in finding that the majority of City Light funds spent on art projects in 2000-2003 were spent on art purchases or projects "with a general governmental purpose, rather than a legitimate utility purpose"; and in choosing which specific art falls in each category. Finding of Fact 51; Order Denying Summary Judgment [on One Percent for Art] at 4.
- 2c. The trial court erred in requiring that art owned by City Light be displayed only in City Light offices or on its property, or stored, rented, or sold; and in restricting City Light's ability to lend art. Conclusion of Law 9; Judgment ¶ 2 and Exhibit E ¶¶ 2-3.
  - 2d. The trial court erred in narrowly defining the

specific purposes for which City Light may purchase art and prohibiting expenditures on art that has a primary purpose of improving City Light's image in a particular place, or cultivating public relations; or mitigating a substation's appearance if the primary purpose of the art is to provide artistic benefit to the surrounding neighborhood and the public as a whole. Conclusion of Law 9; Order Denying Summary Judgment at 4.

- 2e. The trial court erred in first leaving for further factual determination the question whether City Light, as a monopoly in its area of service, may use art as advertising, but then making no applicable findings of fact or conclusions of law after trial. Order Denying Summary Judgment at 4; Findings and Conclusions generally.
- 2f. The trial court erred in replacing decisions by City Light, working with the Office of Arts and Cultural Affairs, with the trial court's own opinions on whether art sufficiently educates the public about conservation. Conclusion of Law 9.
- 2g. The trial court erred in requiring City Light to sell art assets that the court determined were "impermissibly" owned by City Light. Conclusion of Law 10; Judgment ¶ 2 and Exhibit E ¶¶ 4-5.
  - B. Issues Pertaining to Assignments of Error
    - 1. Invalidation of ordinance
  - 1. When a first class charter city's legislative decisions are

entitled to deference, may a trial court reject that rule to invalidate a City ordinance as applied to only one City department, while still permitting that department to engage in the same function? Assignment of Error 1.

- 2. May a trial court invalidate an ordinance of a first class charter city without making any finding of fact or reaching any conclusion of law identifying a reason for the decision, much less a legal standard for the decision? Assignment of Error 1.
- 3. Is the *Okeson* distinction between payment for a public benefit such as streetlights, and payment for services directly benefiting ratepayers, appropriate for deciding which general City policies apply to all departments, including utilities? Assignments of Error 1, 1a, 2, 2a-d, g.
- 4. Did the trial court have a reasoned basis for requiring that City Light funds held in the Municipal Art Fund for later expenditures on City Light art be paid to the Light fund? Assignment of Error 1a.

#### 2. Restriction on use of art

- 5. When the court has determined that art may have a utility purpose, may it override evidence of decisions made by City Light in consultation with the City's Office of Arts and Cultural Affairs about what is in the utility's interest? Assignments of Error 2, 2a-b, 2d, f-g.
- 6. Did the trial court demonstrate a reasoned basis for analyzing art chosen for a conservation or educational message and

rejecting the unrefuted testimony on whether the art adequately meets City Light's stated purposes? Assignments of Error 2, 2a-b, f.

- 7. Did the trial court too narrowly interpret "where City Light does business" and thus may display art? Assignments of Error 2c, 2g.
- 8. Did the trial court erroneously leave for further factural determination the question whether advertising serves a proprietary function when City Light is a monopoly in its territory, then fail to make a decision on advertising after trial? Assignment of Error 2e.
- 9. Did the trial court show any basis for deciding that City
  Light may not use art to serve a public relations function, where the
  evidentiary record shows that "public relations" was used to mean serving
  educational and conservation purposes and the court held at least the latter
  was permissible? Assignments of Error 2d, 2f.
- 10. Did the trial court show a basis for determining that City Light may not use art to mitigate the appearance of a substation if the art is not placed on the substation structure or site? Assignment of Error 2d.
- 11. Even if City Light's decisions on using art may be restricted, did the trial court too narrowly interpret how art may serve a utility purpose, including the court's adoption of a narrow "close nexus" standard unsupported by existing law? Assignments of Error 2, 2a-g.

#### II. STATEMENT OF THE CASE

## A. History leading to trial

## 1. Before the Supreme Court Okeson decision

This case has a convoluted history. On February 14, 2002, plaintiffs filed a Complaint for Declaratory and Injunctive Relief and Damages. CP 3-21. That complaint was devoted almost totally to whether streetlights could be charged to utility ratepayers, which the Washington Supreme Court decided separately<sup>2</sup> without mentioning remedies. Plaintiffs also alleged that the City of Seattle used Seattle City Light as a "cash cow," requiring City Light to pay various inter-departmental fees and charges that exceeded the true and full value of services rendered to or property transferred to City Light, violating RCW 43.09.210 (App C) and other laws. CP 6-7 ¶¶ 5-6.

Seattle's motion for partial summary judgment dismissing the cash cow allegation was stayed until 60 days after the *Okeson* decision. CP 613-615. A large part of Seattle's motion was devoted to the argument that plaintiffs lacked a private right of action under RCW 43.09.210. CP 310-311, 818, 319-326. The trial court, while staying the hearing, determined

<sup>&</sup>lt;sup>2</sup> Okeson v. Seattle, 150 Wn.2d 540, 78 P.3d 1279 (2003)

that "plaintiffs may properly proceed under RCW 80.04.440." CP 614. Seattle later stipulated to not appealing this decision. CP 1636-1637.

After the *Okeson* decision, plaintiffs moved to amend their complaint to add more specific allegations of violation of RCW 43.09.210 and seek detailed streetlight remedies. CP 620-627. The proposed amendment also added an entirely separate subject relating to Sound Transit. CP 621. This motion was granted, CP 815-816, despite the court's prior ruling that barred discovery of Sound Transit issues because the City has a "statutorily imposed obligation to move its utilities, at its own expense, to accommodate Sound Transit's construction." CP 651-652. The Sound Transit issue was, however, stayed for separate trial. CP 816.

# 2. General government function theory added

In a supplemental brief opposing Seattle's still-pending June 2003 motion on cash cow allegations, plaintiffs raised, in reliance on *Okeson* argument that a number of the services for which City Light paid other departments of the City were "general governmental functions." CP 682-697 at 687-688. The trial court later denied Seattle's motion. CP 809-811.

As a result of plaintiffs' new "general government" allegations, as raised in their supplemental brief and recently disclosed expert opinions, e.g., CP 828, 829, 834-835, Seattle filed two separate motions for partial summary judgment. One was a motion on all but one of the disclosed

general government issues. CP 955-976. The Court denied this motion.

Decisions on these issues are not being appealed.

## 3. Summary judgment motion: One Percent for Art

The second motion was devoted solely to the City's One Percent for Art ordinance (App D), which applies to all City departments having capital improvement projects, including City Light. CP 1808-1831.

The motion was supported in part by the declaration of James Ritch, then acting superintendent of City Light. Because of the nature of the court's later judgment, part of his testimony is relevant to this appeal. He testified that City Light's power stations, utility poles, hatch covers, and overhead wires are necessary facilities to run a utility. City Light wishes to be community-friendly by mitigating the impact of its facilities on the urban environment, including through the use of art at or near City Light facilities. CP 818 ¶ 3, 821 ¶ 12. City Light believes it is necessary to advertise and cultivate public relations for several reasons, including educating the public about energy efficiency and conservation, having an informed customer base and citizenry because the utility is "owned" by the citizens, and maintaining a cooperative relationship with customers.

He said the use of artwork carries out these goals. CP 821-822
¶ 13. For example, during the 2000-2001 energy crisis, City Light had an aggressive program of energy conservation, which it advertised by radio in

conjunction with the Mariners' season, believing it would be an efficient way to reach a large number of consumers. CP 820-822 ¶ 10.

The City argued that City Light, in carrying out the City's One Percent for Art ordinance, was appropriately conducting its proprietary business under RCW 35.92.050 (App E) and *Tacoma v. Taxpayers*, 108 Wn.2d 679, 694, 743 P.2d 793 (1987). The City contrasted opinions of plaintiffs' experts Robert Brooks and Carol Opatrny. Ms. Opatrny testified that art is "a nonutility related expense. For that reason, I don't think that Seattle City Light should pick up art related costs." CP 830:4-7. She was unable to think of a utility purpose for art, including the design of hatch covers or a substation design that incorporated a mural or "sculpturing." *E.g.*, CP 826, 827:1-8, 828:15-829:2. Mr. Brooks's deposition testimony was similar. *E.g.*, CP 833, 834:14-835:21.

In opposition, plaintiffs did not provide any declarations refuting any utility purpose for art identified by City employees. Plaintiffs argued that the issue was whether the One Percent program was for a general governmental purpose or a utility purpose authorized by RCW 35.92.050. CP 1284.

Plaintiffs identifed four issues: (1) utility benefit, (2) authority to expend utility funds on art under RCW 35.92.050, (3) whether one percent "exceed[s] the boundaries of that implied authority," and (4) "factual

issues concerning the utility purpose of specific projects, as well as the reasonableness of the total amount Seattle requires City Light to spend on public art each year . . . . " CP 1297.

In reply, Seattle repeated that determining whether the One Percent for Art program is a general governmental function is an issue of law, not of fact. CP 1308-1309. Seattle argued: "The only question before this Court is whether City Light has forged a reasonably close nexus between its art-buying and its business, such that it could not be said that City Light is behaving in an arbitrary and capricious manner." CP 1309.

The court denied the City's motion, but ruled as a matter of law on several points, set out in full in Appendix F, including public relations, conservation education, and where City Light does business. CP 1335-1339 at 1338. The trial court also identified a genuine issue of material fact and further factual determinations needed in the areas of advertising, mitigation, and the one-percent limit. App F. CP 1338.

# B. First phase of trial: Is art a governmental function?

The cash cow issues were tried to the Court in two phases. The first took place April 15 – May 3, 2004. CP 1566. Besides streetlight

<sup>&</sup>lt;sup>3</sup> Plaintiffs also filed a supplemental brief arguing a 1978 case they identified as "controlling," as well as relying on WUTC materials. CP 1313-1316, 1318-1334. The court considered these additional materials. CP 1338 item 7.

remedies, this phase addressed the issue of law, whether various services for which City Light shared costs with other City departments were general governmental services that did not serve the purpose of an electric utility, therefore making it improper under *Okeson* to charge City Light a proportional departmental share. *Id.* A major share of this phase was devoted to One Percent for Art. Before testimony, the court granted Seattle's motion for reconsideration of the court's summary judgment decision on the use of art in advertising and public relations, ordering that both issues be tried. CP 1443-1444; CP 1454-1456; RP 4/15 9:22-10:5.

Plaintiffs took the position that "all of the art should be thrown out wholesale . . . ." RP 4/15 10:8. Plaintiffs stated that the court should, in Phase I, "view the evidence through . . . three kinds of legal lenses . . . ." RP 4/15 15:9-11. These are "the accountancy statute," the cases that "stand for the principle that in order for a utility to make a given kind of expenditure which can be passed on to ratepayers, it has to have a close nexus, I think the cases say a sufficiently close nexus to the furnishing of electricity," and "the Covell test that's discussed . . . in the Okeson case" . . . to decide whether a given kind of charge should be viewed as a tax or

<sup>&</sup>lt;sup>4</sup> While plaintiffs had requested a jury, the Court decided in a preliminary hearing on April 12 that the question of what was governmental versus proprietary would be tried to the court. The decision is reflected at RP 4/15 10:14-17.

a fee . . . ." RP 4/15 15:9-16:9.

The City stated that under *Tacoma v. Taxpayers*, "the same standard that would apply to a private company" applies here. Thus, "there's a wide latitude given to the City in terms of determining how to run that utility." RP 4/15 183-4, 11-20. The City concluded: unless the "policy choices . . . can be seen . . . to be arbitrary and capricious or unreasonable, they must be affirmed." RP 4/15 21:18-21.

No named plaintiff or other member of the class testified on nonstreetlight issues. Plaintiffs called Barbara Goldstein, director of the City's Public Art Program for the Office of Arts and Cultural Affairs (Art Office), as their only art witness. RP 4/15 53:23, 54:8-9. Using web pages, plaintiffs questioned her on the mission of the Public Art Program. She testified at RP 4/15 59:20-60:10:

The program that I manage is the Public Art Program, which has a very specific, dedicated funding source, and that is One Percent for Art from capital construction projects. Because my . . . program has its own distinct funding source, it has to have its own set of standard operating procedures and its own mission, which is responsive to the funding source it derives from. . . . Our mission is concerned with creating visual arts experiences for the people of Seattle, and it is connected specifically with construction projects that the City does.

Ms. Goldstein testified further: "We have to pay attention to the

specific ways that our program is funded, and so a lot of times our projects are targeted to specific elements of our funding." RP 4/15 61:3-8.

She said, "We continue to provide visual arts amenities to connect with capital construction projects and construction that the City is doing." RP 4/15 66:20-67:1. She testified that the mission of the Public Art Program "hasn't changed since 1973 when the program was initiated." RP 4/15 67:15-22. Ms. Goldstein addressed the program's funding sources:

Percent for Art funds could come from capital construction that's funded by ratepayers . . . . Every funding source has a unique set of restrictions that are placed on it. We also have a separate line of funding for maintaining public art, and so every funding source that we have we have to . . . monitor in a very unique way.

RP 4/15 68:6-15.

Ms. Goldstein also addressed the process of choosing projects:

Every year . . . I meet with the liaison from the other City department to determine what would be the most appropriate use of the funds that come from their Percent for Art. We talk about what type of projects they're embarking on and what types of art enhancements would best suit their needs as an agency . . . . We then develop a draft plan, which is reviewed . . . by the other City department, and that plan outlines a broad scope of work that we will pursue for each art project, outlines how the artists will be selected, outlines how much money will go into it. That document then [is] shown and reviewed by the other City department. . . .

RP 4/15 69:2-18.

The Municipal Art Plan for 2001-2002 (App G) "represents all the projects for all the departments that contribute money to the Municipal Art Fund . . . ." RP 4/15 102:18-103:10; Ex 45. She testified that under the Municipal Art Plan, some projects "could be completed in the course of two or three months, another one might take five or six years." RP 4/15 70:6-7, 17-25. She said City Light also pays "collection management expenditures." These cover "what it costs us to . . . install, move, or clean artworks that are in the City Light collection . . . . RP 4/15 78:23-79:7.

Ms. Goldstein testified that part of the City Light collection is the Portable Works Collection: "We've been collecting portable works for City Light since about 1974, and we have approximately 3,000 small-scale artworks in our collection. Those works are placed in City facilities where City Light does business." RP 4/15 93:10-16. The curator "works with the employees of any given floor of a building . . . ." RP 4/15 96:16-20. The delegation of employees get to look at the collection to place art work. RP 4/15 97:4-19. Ms. Goldstein testified that City departments are not restricted to their own art: "City Light does business all over the city, so . . . . their work may be shown, say, in the law department, because the law department does work with City Light, and work that was acquired from

<sup>&</sup>lt;sup>5</sup> These are the total collection; City Light owns about 1,500. RP 4/15 123:15-18.

the Parks Department or the Water Department might find its way on to the walls of City Light." RP 4/15 98:18-24.

Plaintiffs then turned to examining specific City Light art projects. Space allows only a sampling here. The reasoning applied to the Urban Collaboration project (App G at 10), which was begun in 1994, is typical. Ms. Goldstein said, "... this is a project where City Light's director of communications was part of the selection panel, and City Light was very involved in deciding that this would be a project that they would want to fund. ... [T]he utility's purpose here is to build a strong relationship between City Light and the communities that it serves." RP 4/15 105:1-5, 19-25. She distinguished communities from neighborhoods: "... a neighborhood is a place that has a physical boundary. Community might be a particular group of people." RP 4/15 118:7-8. Ms. Goldstein said a project such as Urban Collaboration "helps to ... mitigate the impact of the development that's taking place in South Lake Union and Cascade, which City Light is a significant part," RP 4/15 107:12, 108:1-2, 6-9, explaining:

... a lot of people don't like having substations ... and ... major pieces of industrial infrastructure in their neighborhoods, and so it's always been our approach that it's important to help to create a better – first of all, to help City Light to make better-looking infrastructure, but also to show that they're a good neighbor that actually creates nice physical things in the neighborhoods that they're going to go in and put substations.

RP 4/15 108:11-20.

The court found that Urban Collaboration lacked a sufficient utility nexus. CP 1581 ¶ 51.

Ms. Goldstein testified that some pieces serve to mitigate the ugly infrastructure as well as provide a more pleasant work environment for City Light people, e.g., the Electric Gallery, on a Western Avenue substation. RP 4/19 49:6-14, Ex 62 (App H). A project may be on substation grounds but accessible to the public. E.g., Creston Nelson Substation project. RP 4/19 53:6-58:16, Ex 269 (App I). The court ruled that these two do have a sufficient utility nexus. CP 1581-1582 ¶ 51.

Ms. Goldstein said other lighted pieces are near City Light property, e.g., Wave Rave Cave, RP 4/19 70:2-23, Ex 67, 282 (App J). Wave Rave Cave is next to, but not upon, a City Light vacant lot bought for substation use; the art project is under Hwy 99 in a dark place that Belltown people thought was dangerous. The art is lit with low energy, high intensity lights and is now a little more pleasant. RP 4/19 70:10-23. The court ruled this piece had an insufficient utility nexus. CP 1581 ¶ 51.

Ms. Goldstein said a conservation message may be incorporated into the project. *E.g.*, Skagit Streaming. RP 4/19 75:5-77:15, 79:3-80:13, 94:7-96:6, Ex 72 (App K). The project powered video cams with fiber optic cables placed in the Skagit for various purposes, "to capture the life

of the salmon and the wildlife surrounding the aggregate ponds" and brought it "back to the public so that the public would have a sense of what the . . . impact of the dam was on the wildlife in the area." RP 4/19 76:10-21. She testified that the "piece was intended to be displayed in a variety of different settings. One was downtown . . . within sight of . . . Elliott Bay, where people that are ordinary ratepayers or citizens that are going by could see something about the relationship between the dam and the nature and the city." RP 4/19 76:22-77:2. This portrayal was "on the Bon Marche parking garage" from dusk till about midnight and included the cite to the Skagit Streaming website. RP 4/19 80:2-5, 79:16-21.

In addition to this portrayal, Ms. Goldstein said, the "other location is on a website . . . and it has links from both our [art] website and Seattle City Light's website, and that particular element of the piece has a tremendous amount of information about the Endangered Species Act, salmon – life cycle of salmon, and a number of issues that City Light has been concerned with as it builds and runs the hydroelectric facilities." RP 4/19 77:3-10. Finally, Skagit Streaming "was displayed . . . in the lobby of City Hall on a monitor so that people . . . like City Council people that are making decisions about the environment and about electricity could see it every day as they went in and out of the building." RP 4/19 77:11-15. The trial court later made a split decision on this project, ruling the website had

a sufficient utility nexus, but the municipal building lobby video and downtown parking garage projections did not. CP 1581-1582 ¶ 51.

Ms. Goldstein said that some art projects are on other public property, *e.g.*, Dreaming in Color, at Seattle Center's McCaw Hall. RP 4/19 100:16-102:22, 103:4-10; Ex 279, 288 (App L). The piece "won a National Lumen award for the use of light." RP 4/20 19:6-9. It "is a light sculpture that is the entrance to Marion Oliver McCaw Hall from Mercer Street." RP 4/19 100:23-101-5, 101:23-102:5, Ex 59. Development of a brochure explaining the low-energy light nature of the project was suspended pending the outcome of this litigation. RP 4/20 19:3-8. Its plaque will be corrected to credit City Light and its brochure will be created post-litigation. RP 4/19 102:6-18. The court ruled that Dreaming in Color had an insufficient utility nexus. CP 1581-1582 ¶ 51.

Ms. Goldstein testified that other art resulting from City Light's Percent for Art funds are in other City offices. *E.g.*, Killer Whale Crest Hat and the Speaker Stick, in the lobby of the Mayor's office, RP 4/19 109:24-110:4, 112:1-7, 4/21 134:18-135:21, Ex 280, 346 (App M); or art in the Alaska Building, where senior citizens come to the Senior Citizens Office "for advice about a variety of different things . . . ," RP 4/19 145:2-5. City Light portable art is hung "in places that are accessible to the public," and "in places where City Light either has its offices or where it

does business." RP 4/19 157:10-21; see also 158:13-15, 158:21-159:13.

One example was the City personnel office, in the Dexter Horton building, which serves City Light. RP 4/19 146: 5-7. The court ruled that City Light could not fund art displayed away from its own facilities. CP 1584 ¶ 9.

Ms. Goldstein testified that portable art may also be in the art depot, where art moves in and out. RP 4/19 142:4-22. About 90 percent of city departmental portable art is on display at any one time. There is "a huge demand from the employees that worked in the various departments to have more art placed on their walls." RP 4/19 161:16-19, 162:4-12. One piece that City Light purchased for \$50,000 was sold for \$254,000 with the Dexter Horton Building, because it could not be removed; the money was returned to the City Light Percent for Art Fund. RP 4/19 156:2-157:9.

Ms. Goldstein also testified that when City projects are announced, such as a . . . substation, "we get a call from the community representative . . . saying . . . we know that the City has a Percent for Art, what are you going to do for us . . . to basically offfset that." RP 4/19 169:21-170:9. She said "the North Service Center was a response to that . . . because the Licton Springs Community . . . were putting strong demands on City Light that they make that a more attractive facility." RP 4/19 170:13-18.

She testified further that "the Public Art Program in Seattle is extremely well known. It's considered to be a national model." RP 4/19

172:24-173:1. At the time of testimony, Ms. Goldstein had been in her position for 10 years. RP 4/15 54:7-12. She came from Los Angeles, which had such a program that also included the utilities. RP 4/19:2-23.

She testified that her understanding for expenditures of City Light Percent for Art funds came from meeting with people in the City, going through the history of legal opinions, and meeting with the Law Department. RP 4/20 4:18-24. "The guidelines that we gave for the expenditure of City Light Percent for Art funds were laid out in communications between City Attorneys 'York and Baylor' [sic; Jorgen Bader] and the Attorney General and City Attorney Gordy Davidson." RP 4/20 4:22-5:3. She testified to her understanding:

And there were a number of different purposes that were laid out in legal opinions. One was that the funds could be used to improve the working environment for City Light and its workers and places where City Light did business.

Another was to be able to mitigate the impact of City Light facilities on the surrounding communities. Another was educating the public about the work that the City Light did and utilities issues. And a fourth one was building positive public relations between City Light and the communities it served. We tried to keep it in those guidelines....

RP 4/20 5:1-12.

Ms. Goldstein referenced Ex 274 (App N), a letter from an assistant attorney general, as one thing she reviewed. RP 4/20 5:14-20,

6:20-7:24. Asked to addressing the writer's expressed concern that "it is easy to lose track of the standards and to think of the utility funds as merely another source of financial support for . . . art as a general government purpose" (Ex. 274 at 2), she testified:

We make sure that the work has a nexus with either the location of projects that City Light is doing, that it has a clear utilities purpose and that it demonstrates the use of light or sustainability, or that it results in some kind of an object that goes into the City Light Portable Works Collection.

We also work with City Light . . . to develop our Municipal Art Plan and make sure that it complies with their understanding of what they would like to see us do. And if they ask us not to do something, we cancel it or postpone it, and that happens very frequently.

RP 4/20 47:3-24.

Ms. Goldstein next testified to how several art programs fit into her understanding of the permissible bounds of City Light expenditures on art: e.g., Artist in Residence Programs, Skagit Streaming, Wave Rave Cave, Temple of Power (App O), and Oculus Portals (App O). RP 4/20 9:6-11:4. She explained others beginning at RP 4/20 19:14, including the Speaker Stick, now in the Mayor's reception area, where City Light does a lot of business, saying, "City Light and the Mayor's Office are involved with the tribal communities quite a bit around environmental issues . . . ." RP 4/20 29:9-24. Mr. Ritch also testified on the Speaker Stick. RP 4/21 137:12-23.

Ms. Goldstein testified that in some cases (e.g., testimony at RP 4/20 12:8-13:10, 13:22-15:19), City Light and its employees performed work, such as installation of Wave Rave Cave, on top of the Percent for Art funds because certain projects "really helped advance their educational goals . . . ." RP 4/20 13:7. She said City Light has been willing to put effort and in-kind support or funds into adding to projects. RP 4/20 32:18-23. In her experience, City Light has voluntarily spent more than one percent on art. RP 4/20 33:16-18.

Dwight Dively, Director of Finance for the City of Seattle for 10 years, testified that other cities allocate up to 2.5 percent for art. RP 4/28-I 15:17-16:1, 4/28-II 4:14-25.6 He testified that he sees three different benefits to City Light in the One Percent program: first, "... the portable art, is displayed in the City Light's offices where it's accessible to the citizens and to the employees, which is something that improves the working environment"; second, "... where the art is part of a facility... it becomes a more attractive part and more acceptable part of a community .... By being able to put art into them ... certainly reduces community resistance ..."; "... a third benefit, ... more generally, is to City Light's customer base, the people who live in the City and purchase services from

<sup>&</sup>lt;sup>6</sup> Because of tape transcription difficulties, the April 28 and May 3 transcripts are in two sections filed on different dates, cited as 4/28-I and 4/28-II, and 5/3-I-I and 5/3-II.

City Light by having that art in the community in these various locations ...." RP 4/28-I 34:15-35:10, 4/28-II 4:9-13.

Gary Zarker was Superintendent of City Light for eight years, until May 2003. RP 5/3-I 4:11-5:1. He testified: "There are multiple ways that I think City Light benefited from the One Percent program." RP 5/3-II 18:14-15. He included "mitigation," saying that . . . "the electrical system is not just substations and generation plants. It's a machine that includes the wires that connect to your house and mine, and that investment, along corridors, along neighborhood streets, is a community impact that I think isn't lost on those who get to enjoy the construction activities that occur on those streets." RP 5/3-II 18:16-19:2.

Mr. Zarker testified that as another benefit, "a portion of it helps convey some of the program messages that the utility is pursuing, conservation, environmental issues, salmon protection, green power opportunities, raising public awareness of those services that are a part of the utility's program." RP 5/3-II 19:15-20. Also, his "impression is that the vast majority of the employees of the utility are pleased to have that service. They enjoy having the art on their walls . . . ." RP 5/3-II 19:23-25.

Mr. Zarker mentioned the "salmon program" as one instance in which City Light spent money beyond the One Percent program, saying: "we through surveys had found that the considerable investment that City

Light invested in recovering salmon stock on the Skagit River, something absolutely vital to the future of those generation plants and the utility, was not well understood by the general public or ratepayers, and . . . the particular artwork . . . needed to have additional money to project it in the location they were going to do it in downtown." RP 5/3-II 21:2-16.

Finally, Mr. Zarker testified that City Light advertises to "promote the programs, largely conservation. We had a green power program . . . . People need to be aware of what those options are . . . ." RP 5/3-II 24:11-17. He also spoke on the benefit of public relations to City Light, in part:

I think one of the fundamental premises of a public utility is that the citizenry is involved and is knowledgeable enough about complicated issues to help the utility make decisions about the future of the service we provide. Helping people understand complex issues often is a public relations function that is highly appropriate. It is very controversial within the utility, and within the City sometimes, as to how much should you spend on something like that. But if it does provide for a more informed citizen owner, the utility found that to be very useful.

RP 5/3-II 24:22-25:17.

Margaret Pageler, a lawyer who served for 12 years on the Seattle City Council and had major committee responsibility for City Light, testified by deposition. CP 1587 ¶ 7; 1462:11-1464:2. She testified that "the rules and regulations that apply to city departments with respect to contractors, employment and so forth also apply to the city utilities." CP

1464:17-22. She said, "I think that City Light is a department of the city and that policies that apply to city departments also apply to City Light and Seattle Public Utilities." CP 1478:10-12. She compared the City program with the state's and other cities' programs. CP 1478:14-18. She gave examples of other City policies that apply to City Light: "city projects will be built to green standards. That raises the costs... We used to have WMBE requirements which probably, who knows, may have raised the costs... We have a requirement that contractors... have to verify that they provide health benefits for domestic partners... We have a number of standards that any of our component agencies must comply with." CP 1478:19-1479:12.

Ms. Pageler also "would advocate that [art] be displayed in places like the mayor's office where there are more likely to be City Light customers . . . , neighborhood service centers, those kinds of places." CP 1500:24-1501:3. She testified that "one percent for arts is the ceiling on contribution to public art in connection with capital projects, not only for the utilities but for all city projects." CP 1477:18-20. She believed that "when you have a facility that you have to build . . . , if there's no cap on the expenditure for mitigation and amenities, . . . the community can force enormous expenditures. And I've seen it time and time again with the utilities . . . because you've got to get the utility infrastructure built." CP

1502:15-24.

During closing argument, Mr. Jurca stated that the way the art program is set up "couldn't, in our view, be a more obvious kind of tax on the utility . . . ." RP 5/5 45:5-10. He then deferred to Ms. Divine to discuss art, who stated that "we do have a problem with the entire 1 percent art program . . . ." RP 5/5 46:20-21. The judge interrupted to state her position: "You don't really need to address that, because I tend to agree with that . . . ." RP 5/5 46:22-23. The judge also said that beautifying the employee work environment and customer service areas were legitimate utility purposes, but she was interested in art at substations "where the art is primarily being used to mitigate the unattractiveness of the substation or of the facility." RP 5/5 47:5-16.

Ms. Divine stated that "we start out with the evil of the program being this 1 percent fee, the tax, that creates this huge pool of money that then the public art program figures out how to spend, and they try to come up with a rationale to connect it to a utility purpose, but that's not the primary function." RP 5/5 47:20-25. While she conceded that City Light has "the right to make their facilities attractive as part of the facility," RP 5/5 48:8-11, she argued that artwork outside on the grounds is not a "proper proprietary utility function." RP 5/5 48:17-23.

Mr. Patton, arguing for the City, pointed out that City Light is part

of the City of Seattle: "... the City is a corporation that is a first-class charter city organized under the laws of the State of Washington .... He stated that City Light "is subject to general City requirements for many things," e.g., the Civil Service program, the personnel ordinance, the health benefit requirement related to construction contracts. RP 5/5 80:9-81:14. He stated: "... the One Percent for Arts program ... [is] a generic requirement of the City that applies across the board." RP 5/5 83:22-25. Finally, he argued that without the limit of one percent, City Light could be exposed to community demands for greater art expenditures. RP 5/5 87:20-88:18.

Findings of Fact and Conclusions of Law for the Phase I trial were entered on May 21, 2004, including those relevant to art, CP 1567-1568 ¶¶ 1-4, and specifically addressing art, CP 1579-1582 ¶¶ 45-51, and CP 1582-1585 ¶¶ 1-3, 9-11. Neither advertising nor education (beyond conservation) was mentioned. The remedy was reserved to the end of Phase II. CP 1585 ¶ 13. Seattle contends that Findings of Fact 50 and 51 (App A), which find a purpose of benefiting the public and serving a general governmental purpose rather than a utility purpose, are erroneous.

Seattle further contends that Conclusion of Law 11 (App A), invalidating the One Percent for Art ordinance as applied to City Light, is erroneous. Seattle also contends that Conclusion of Law 9 stating detailed

limits on City Light's purchases and use of art, and prohibiting the use of art in "cultivating public relations" but failing to address the reopened question of advertising, is erroneous. Last, Seattle contends that Conclusion of Law 10, addressing remedies, is erroneous.

#### C. After the art trial

The second phase of the trial began on June 7. It was devoted to plaintiffs' allegations that, under RCW 43.09.210, other departments charged City Light excessive costs. Art was not directly addressed.

Based on the trial court's Phase I findings and conclusions, on July 28, 2004 the parties entered into a Stipulation Regarding One Percent for Art Remedies. CP 1590-1597. Under the stipulation, if the trial court is upheld, "impermissible art" will be transferred to other ownership. In that event, City Light will be reimbursed \$941,312 plus interest, plus another \$354,633.42 in City Light contributions held in the Municipal Art Fund but not yet expended. CP 1593 ¶¶ 5-6, 1596-1597.

On September 28, the Court entered Phase II Findings of Fact and Conclusions of Law nunc pro tunc August 18, 2004. CP 1598:15-18.

Under the parties' Stipulation Waiving Appeal Except on Art Rulings (CP 1636-1637), entered on October 8, none of these is the subject of appeal.

Partial Judgment Pursuant to CR 54(b) on Phases I and II was entered on October 8. CP 1598-1635 (App B). The judgment incorporated

the parties' stipulation on art matters as Ex E. CP 1602 ¶ 2. The City asserts that the following rulings are in error: (A) The One Percent for Ordinance, SMC Ch. 30.32, is declared invalid as applied to City Light; (B) The City is prohibited from enforcing that ordinance with respect to City Light; (C) proprietary utility funds of City Light may be spent "only on art or art projects with a close nexus to the utility's primary purpose of furnishing electricity to its ratepayers . . . ." CP 1602, 1600 ¶ 2 A, B, C, App B (emphasis added). <sup>7</sup>

#### III. SUMMARY OF ARGUMENT

Plaintiffs call the One Percent for Art ordinance (App. D) "evil" because the budget is set before the art is chosen. Ignoring uncontroverted testimony on the purpose of each piece of art, the trial court gave no deference to the City's purposes in operating its utility business and erroneously invalidated the ordinance as applied only to City Light, without a stated basis, while still permitting City Light to spend utility funds on art within narrowly drawn limits, outside the One Percent program.

The trial court never addressed the fundamental question of why a utility that is a department of a first class charter city is not subject to *this* general policy, in contrast to other general policies. CP 1567  $\P$  2.

<sup>&</sup>lt;sup>7</sup> Pages 2-5 of the judgment are in the Clerk's Papers in the wrong order but are cited as the Clerk numbered the pages.

The trial court also gave no reasons for superseding the thinking of the Attorney General's office that art purchased by a utility is within the law if it has a "discernible" nexus to the utility's purpose (Ex. 274, App N), or the resulting City guidelines followed for nearly 20 years before the experts retained by these retired assistant city attorneys<sup>8</sup> asserted that the art ordinance is illegally applied to City Light. Nothing in the record suggests the State Auditor or Attorney General has changed opinions.

Nevertheless, the trial court erroneously set narrow but confusing limits on how City Light may use art.

#### IV. ARGUMENT

#### A. The standard of review

The Court reviews conclusions of law de novo. Perry v. Costco Wholesale, Inc., 123 Wn. App. 783, 792, 98 P.3d 1264 (2004). Whether an ordinance is valid is a question of law that is reviewed de novo. DCR, Inc. v. Pierce County, 92 Wn. App., 660, 670, 964 P.2d 380 (1998), review denied, 137 Wn.2d 1030 (1999), cert. denied, 529 U.S. 1053 (2000). A court's fundamental objective in interpreting a statute is to carry out the

<sup>&</sup>lt;sup>8</sup> No class representative plaintiff is on record, in their depositions (e.g., CP 65:8-75:21) or at trial (where only Doris Burns testified, RP 4/15 22:15-28:18), as challenging One Percent for Art. On March 1, 2005, the same law firm, in the name of the two retired assistant city attorney *Okeson* plaintiffs and another former City employee, filed a new lawsuit asserting the same art fund and other violations in relation to the Seattle Public Utilities department (water, sewer, etc.). King County Cause No. 05-2-07351-9 SEA.

intent of the legislative body. *Margetan v. Superior Chair Craft Co.*, 92 Wn. App. 240, 245, 963 P.2d 907 (1998). Here, that is the City Council.

Where a court is asked to review a legislative decision, the court applies the "arbitrary and capricious" standard. *Teter v. Clark County*, 104 Wn.2d 227, 234, 704 P.2d 1171 (1985). That court stated: "A legislative determination will be sustained if the court can reasonably conceive of *any* state of facts to justify that determination. . . . To be void for unreasonableness, an ordinance or resolution must be 'clearly and plainly' unreasonable." *Id.* at 234-35 (emphasis by the court). Hence, plaintiffs "have a heavy burden of proof" that the City's actions in applying the art program to City Light "were willful and unreasoning, without regard for facts and circumstances." *Id.* at 235. To be unreasonable is to be "[n]ot guided by reason; irrational or capricious." 1537 Black's Law Dictionary (7<sup>th</sup> ed. 1999). Nothing in the record meets this burden. To the contrary, all the testimony was contrary to plaintiffs' theory.

Appellate review of the evidence is limited to determining whether substantial evidence supports the challenged findings of fact and, if so, whether the findings support the conclusions of law. Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise." *Perry* at 792. Here, the evidence is to the contrary.

The court may review earlier rulings on summary judgment if

previous orders prejudicially affect the final order to extent that appellant's entitlement to relief under the final order is based on the earlier rulings. *Behavioral Sciences v. Great West*, 84 Wn. App. 863, 869-70, 930 P.2d 933 (1997). In this case, several points on which Seattle seeks relief were decided in the court's order denying summary judgment on art.

Denial was for mixed reasons of law and fact. To the extent the trial court's decisions were based on issues of law, that order and the evidence underlying it are reviewable here. *Bulman v. Safeway, Inc.*, 96 Wn. App. 194, 198-99, 978 P.2d 568 (1999), rev'd on other grounds, 144 Wn.2d 335; see also Adcox v. Children's Orthopedic Hospital, 123 Wn.2d 15, 35 n.9, 864 P.2d 921 (1993) (refusing to consider summary judgment pleadings and evidence because denial was based on factual disputes).

In denying Seattle's motion for summary judgment on art, the trial court decided that the City may not expend funds on public relations as a matter of law, and identified the utility purpose of offsetting the negative appearance of facilities as an issue of "material fact," but said that whether advertising serves a proprietary purpose when the utility is a monopoly required "further factual determination." Both the public relations and the advertising decisions were reopened for the art trial. RP 4/15 8:18-10:5. However, no decision on the use of art in advertising resulted from the trial. Therefore, the public relations, as well as the advertising, portions of

the summary judgment decision should be reviewed here.

#### B. Seattle's art ordinance is presumed valid

Municipal ordinances, such as ch. 20.32 SMC, are presumed valid. Heinsma v. City of Vancouver, 144 Wn.2d 556, 561, 29 P.3d 709 (2001). The person challenging an ordinance has the heavy burden of proving that it unconstitutionally conflicts with a state statute. Id.; Rabon v. City of Seattle, 135 Wn.2d 278, 287, 957 P.2d 621 (1998). Enactments "that relate to the same subject and are not actually in conflict should be interpreted to give meaning and effect to both." Margetan, 92 Wn. App. at 245.

In Heinsma, the Supreme Court upheld an ordinance because it found no conflict, under state Constitution, Art. XI § 11, between Vancouver's ordinance extending health benefits to domestic partners of its employees and a state statute authorizing cities to provide health benefits to "dependents." Id. at 560-561, 566. The Heinsma principles apply with equal weight here. The trial court did not specify any statutory or constitutional conflict, and the State itself has similar art statutes.

# C. Conflict with a statute is not easily found

Municipal ordinances are to be harmonized with state statutes if possible. *Heinsma* at 566. Unconstitutional conflict is found "where an ordinance permits that which is forbidden by state law, or prohibits that which state law permits." *Rabon v. City of Seattle*, 135 Wn.2d at 292.

Here, neither limitation applies.

State law does not forbid having a percent for art program. For example, the State applies to State colleges and universities a one-half-ofone-percent-for-art program that is funded from construction projects. RCW 28B.10.027. The State also established a similar program for state government agencies. RCW 43.17.200, 43.46.090. If the trial court's unstated reason for finding the One Percent for Art ordinance partially invalid was based on a statutory conflict theory, the only question is whether a first class charter city may require all departments having public works projects, including utilities, to participate. If not, then an unaddressed question arises: whether a city may require a utility department to participate in any City-wide policy. For example, the art ordinance is part of the same chapter that says departments hiring public works contractors must require them to provide certain domestic partner benefits. SMC § 20.45.010-.050. The record contains nothing suggesting that city policies for employee benefits, architectural characteristics, behavior of hired contractors, or art should stop at the utility doorway.

# D. First class charter cities are given deference to carry out their broad legislative powers

First class charter cities have broad legislative powers under the state Constitution, art. XI § 10. *Heinsma*, 144 Wn.2d at 566. The only

limitations on the power of such a city is that its actions "cannot contravene any constitutional provision or any legislative enactment." Winkenwerder v. Yakima, 52 Wn.2d 617, 622, 328 P.2d 873 (1958).

Seattle therefore has as broad legislative powers as the state, except when restricted by state legislative enactments. Id. Grants of municipal power are to be liberally construed in favor of constitutionality. Heinsma at 561.

Seattle thus has broad power both to adopt the One Percent for Art ordinance for all City departments and to set rates for electricity – itself a legislative act. Earle M. Jorgensen Co. v. Seattle, 99 Wn.2d 861, 867, 665 P.2d 1328 (1983), cert. denied, 464 U.S. 982. One reason for judicial deference in such a matter is "the public accountability of elected officials." Jorgensen at 868. Here, no evidence was provided that the art ordinance resulted in unfair, unjust, and unreasonable rates (RCW 80.28.010), or contravened any other state law.

# E. Seattle has broad authority to operate a utility

RCW 35.92.050 (App E) provides legislative authority for a city to operate a municipally owned electric utility, including "full authority to regulate and control the use, distribution, and price thereof . . . ." Under this statute, selling power constitutes a business or proprietary function of a City, rather than a "general government" function. *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 694, 743 P.2d 793 (1987).

The City may behave as a private corporation would behave when carrying out this function: "[W]hen the Legislature authorizes a municipality to engage in a business, it may exercise its business powers very much in the same way as a private individual." *Id.* Therefore, the Court broadly construes the City's authority to achieve its legislative objectives in connection with City Light: "Since 1910, we have . . . viewed the Legislature as implicitly authorizing a municipality to make all contracts, and to engage in any undertaking necessary to make its municipal electric utility system efficient and beneficial to the public." *Tacoma v. Taxpayers*, 108 Wn.2d at 694-95. The Court also views the express grant of proprietary authority to run a utility "as implying those 'powers . . . necessarily or fairly implied in or incident to [express powers] and also those essential to the declared objects and purposes of the [municipal] corporation." *Id.* at 695.

Finally – a point that can easily be overlooked – where a first class charter city is involved, municipal authority to conduct even a governmental function is liberally construed. *Id.* at 694 n.8. Here, the trial court failed to do so. But following *Tacoma* and *Teter*, the question this Court must answer is whether City Light's participation in the arts program is arbitrary, capricious, or a manifest abuse of discretion, *Tacoma* at 695, or unreasonable in the sense of being irrational, capricious, or absurd.

Further, because rates that a city sets for utility services are presumptively reasonable, the person challenging them has the burden of proof. Faxe v. Grandview, 48 Wn.2d 342, 351-52, 294 P.2d 402 (1956). City Light's participation in the One Percent for Art program varies, depending on its budget for capital improvements within the city limits. SMC § 20.32.020-.030. There was no evidence at trial on the effect of the art program on electricity rates, past, present, or future. Consequently, there is no proof that any plaintiff was damaged by the existence of unreasonable or arbitrary rates resulting from the art program.

# F. The trial court's apparent rejection of the City's broad authority to set Citywide policy is erroneous

The trial court found as a fact: "Seattle owns and operates Seattle City Light as a proprietary electric utility and as a department of the City. As a department of the City, City Light is subject to general ordinances, policies, and budget processes of the City." CP 1567 ¶ 2. This fact has not been appealed and is therefore a verity. Further, the finding is supported by the unrefuted testimony of Margaret Pageler. CP 1464:17-22, 1478:10-12. The court nevertheless concluded: "The City's One Percent For Art ordinance, SMC Ch. 20.32, is invalid as applied to the City's proprietary electric utility, City Light. Seattle shall henceforth be prohibited from enforcing its One percent For Art ordinance with respect to City Light."

CP 1585 ¶ 11. This conclusion of law is not supported by finding of fact 2, or otherwise. It is therefore erroneous.

The Okeson court, 150 Wn.2d 540, 551-52, pointed to the principles of Tacoma v. Taxpayers. However, the Okeson court went on to determine that providing streetlights is solely a governmental function "because they operate for the benefit of the general public, and not for the 'comfort and use' of individual customers." Okeson at 550. Thus, the Supreme Court gave less deference to the City's decisions on streetlights, and plaintiffs argued that the same rule should apply here.

Here, however, the trial court made no similar finding. In fact, the court did not invoke the three-part *Covell*<sup>9</sup> analysis used in *Okeson*. To the contrary, the court determined that City Light may choose to spend its funds on art. That decision was not appealed. Hence, art is not solely a governmental function. The decision appears to be that art becomes a "governmental function" only if (a) it is too far from the interior of a City Light office or other structure and therefore benefits people who may not be ratepayers, or benefits people in addition to City Light ratepayers and employees, or (b) it is an individual piece that did not fit the court's perception of a close utility nexus.

<sup>&</sup>lt;sup>9</sup> Covell v. City of Seattle, 127 Wn.2d 874, 879, 905 P.2d 324 (1995).

See, for example, Conclusion of Law 9, in which the court ruled: "City Light may not spend utility funds for the purpose of mitigating a substation's appearance, when the primary purpose of the art is to provide artistic benefit to the surrounding neighborhood and the public as a whole." CP 1584; see also CP 1600 ¶ 2C (requiring "close nexus"). The court's decision condemns the motivation of benefiting anyone besides employees. However, substations are in neighborhoods. Mitigating the appearance of substations necessarily benefits the surrounding neighborhood and any member of the public who happens to pass by. Unrefuted testimony by Goldstein, Zarker, and Pageler described why mitigation is a legitimate utility purpose for providing an artistic benefit to the neighborhood, not solely to employees who service the substation.

For further example, the court reached a split decision about the multi-phase Skagit Streaming project, deciding that the website provides content about conservation, but rejecting the stated utility purpose of the display in the Municipal Building lobby as well as the evening downtown parking garage wall display, where both ratepayers and other citizens would see it. This result is in spite of the unrefuted testimony that both City Light and the Art Office believed they were choosing art to meet a utility function — in contrast to the *Okeson* court's determination that for streetlights, the City was engaged in a revenue-raising ploy. Here, the

court's decision ignores both precedent and the evidence.

Further, the *Okeson* analysis cannot be stretched far enough to encompass a policy choice made 30 years ago that applies to all City departments. Despite plaintiffs' fervent desire, not every City budget line item can be reduced to a tax versus fee query. *Branson v. Port of Seattle*, 152 Wn.2d 862, 874 n.5, 101 P.3d 67 (2004).

# G. The trial court's limits on City Light's use of art are too restrictive and are unsupported by the record

City Light's right to use art has apparently arisen only once before. There, the State suggested permissible limits defined as a "discernible nexus" to utility purposes. Ex 274 (App N). Nothing in the record suggests that the State Auditor or State Attorney General has found the City to be proceeding illegally<sup>10</sup> since an assistant attorney general said, in 1985:

I have [n]ever taken the position that the city utilities may not legally expend utility funds for the purchase or placement of art. We bureaucrats are not necessarily such philistines as to think all utility facilities must be ugly and utilitarian. As you eloquently point out, there is a place for beauty and art in the administration of the utility as there is in the administration of any governmental agency . . . .

... So long is there is a *discernible nexus* between the use of utility funds and the purposes for which the utility exists, I will not argue about an expenditure.

<sup>&</sup>lt;sup>10</sup> Nor is there evidence that these plaintiffs ever complained to the State Auditor about art, in contrast to their streetlight rates complaint.

Attorney General letter No. 48315, October 7, 1985, Ex. 274, at 1-2 (App N) (emphasis added).

In the absence of direct law, this Attorney General viewpoint on the precise subject at issue, in the context of a state audit, is entitled to significant weight. *See Belas v. Kiga*, 135 Wn.2d 913, 928, 959 P.2d 1037 (1998) (giving great weight to a formal Attorney General Opinion).

The Attorney General letter and the trial court's ruling that City Light may spend money on art both establish that art may have a discernible, or sufficiently close, nexus to utility functions. Whatever the precise label, the trial court erroneously set an unreasonably narrow focus for finding a "close nexus" to utility functions. <sup>11</sup> The question should be whether there is a reasonable relationship between the utility's purpose and the art investment. City Light should have broad discretion to decide how to carry out that purpose. Otherwise, the courts, as well as the utilities, face a future of being tied up forever in the minutia of whether any given piece of art has a sufficient utility purpose, or not.

#### H. The decision cannot be reconciled with the evidence

In some three trial days devoted to the subject of art, plaintiffs provided no testimony contradicting City witnesses on the purposes of

<sup>&</sup>lt;sup>11</sup> Even the trial court used "sufficient nexus," in Finding of Fact 51, CP 1581; and plaintiffs referenced the "sufficiently close nexus" standard in opening statement, RP 4/15 15:24-16:1.

City Light art. They simply argued that the stated purposes were not adequately borne out by the web pages they introduced into evidence, and that the entire art program served a general governmental purpose. The court rejected the concept that art *per se* serves a general governmental purpose. Therefore, the remaining question is whether the court wrongly decided whether particular categories or pieces of art "have a sufficient nexus to legitimate utility purposes." Finding of Fact 51, CP 1581.

It is the law of this case that City Light may purchase art to beautify its offices and customer service facilities, educate the public about conservation, and mitigate substation appearances to the extent the art is inside or upon the substation or its grounds, as well as pay maintenance costs. Conclusions of Law 9-10; see Finding of Fact 51 (listing specific art works), CP 1581-1582; and Judgment, CP 1602, 1600 ¶ 2.

The question, then, in light of the evidence, is (1) whether limitations on advertising or public relations are too restrictive, (2) whether the testimony demonstrated a sufficient utility purpose for art that witnesses identified as conveying conservation or environmental messages, (3) whether "where City Light does business" is too narrowly interpreted, and (4) whether City Light may place art offsite to mitigate its ubiquitous wires and substations. Underlying this question is the trial court's unchallenged finding that "City Light representatives work with

the Office of Arts and Cultural Affairs to choose suitable art and art projects." Finding of Fact 45, CP 1579:23-24.

Advertising: Witnesses at trial and supporting summary judgment did not distinguish between advertising (for which the court wished further factual development) and public relations (on which the court ruled as a matter of law). It was clear, however, that City Light management was not using either term in the sense of "we're the nice guys" promotion. Instead, they used "public relations" to mean a way of educating its public about conservation and other utility matters. CP 821-822 ¶ 13 (Jim Ritch); RP 5/3-II 19:15-20, 21:2-16, 24:11-17, RP 5/3-II 24:22-25:17 (Gary Zarker). All of this unrefuted testimony falls within the guidelines of WAC 480-100-223 for utilities regulated by the WUTC. The court made no ruling on advertising, but rejected public relations. Both decisions are erroneous.

Education and advertising: It is established that both conserva-

The City understands the court's ruling on advertising to be in the context of using art as an advertising medium. Some other forums have addressed utility advertising, but apparently not utility art. E.g., WUTC. v. Pacific Power & Light Co., 7 P.U.R.4th 470 (WUTC Nov. 20, 1974) (advertisements directed to energy conservation and the proper use of energy is beneficial to a utility's customers, and therefore an appropriate expenditure); Alabama Power Co. v. Alabama Public Service Comm., 359 So.2d 776 (1978) (corporate management should be permitted to control the amount of advertising expenses incurred by the utility; the Court will not substitute its judgment for that of legislative agency fixing rates); State v. Oklahoma Gas & Electric Co., 536 P.2d 887 (Okla. 1975) (where the company's management is not unreasonable, or where advertising expenses are not "excessive" or "unwarranted," they should be allowed as an operational expense).

tion and environmental protection have a utility purpose. *Tacoma v.*Taxpayers, 108 Wn.2d at 697. The trial court recognized the conservation purpose as one use of art. CP 1338. The court did not mention education, other than about conservation. CP 1584 ¶ 9. And from the judge's ruling that City Light may use art to educate about "conservation," it is not certain that City Light may use art to educate about anything else.

It is also established that utilities have implied powers to carry out their purposes. *Hite v. Public Util. Dist. No. 2*, 112 Wn.2d 456, 458-59, 772 P.2d 481 (1989). By analogy to the scope given utilities that are subject to regulation by the WUTC, it is also implied that certain uses of art in educational advertising, including promotional advertising, is permissible for City Light. WAC 480-100-223 (App P) (allowing regulated utilities to advertise to inform customers how to conserve energy or reduce peak demand, and promote the use of energy-efficient appliances, equipment, or services. § 223(2).<sup>13</sup>

Where City Light does business: City witnesses did not take a

<sup>&</sup>lt;sup>13</sup> Unlike the facts in Jewell v. WUTC, 90 Wn.2d 775, 585 P.2d 1167 (1978), City Light is not contributing to charities, or to community art programs. The art in question remains an asset of City Light, and may appreciate in value. Finding of Fact 45, CP 1579:25-1580:2. In the same vein, the facts are different in Kightlinger v. Pub. Util. Dist. No. 1, 119 Wn. App. 501, 81 P.3d 876 (2003), review granted, 152 Wn.2d 1001, in which a utility had a side business of repairing appliances. City Light uses art for purposes of its core business. Kightlinger also concerned the powers of a public utility district, not the broad powers of a first class charter city. Des Moines Marina Assn. v. Des Moines, 124 Wn. App. 282, 294 n.17, 100 P.3d 310 (2004)

narrow view of where City Light does business or has facilities. Mr. Zarker, for example, testified at trial that the system is not just substations and generation plants; it is the wires on the streets. RP 5/3-II 18:16-19:2. Ms. Goldstein testified similarly, and added that City Light personnel visit various City offices. RP 4/15 108:11-20; 4/19 169:21-170:18. Ms. Pageler agreed. CP 1502:15-21. But the trial court rejected the uncontroverted evidence and ruled that City Light may not purchase or own art that is outside the utility's downtown office space, its north and south service centers where there are both employees and customer-payment counters, and its substation walls and grounds, or its large facilities such as the Skagit and Boundary dams.

The result is to determine that City Light may use art to educate its own employees, as well as any ratepayer who visits a City Light office, about conservation, but it may not educate anyone else, especially if the general public might also benefit. Such a result cannot be reconciled with the trial court's decision that City Light may educate about conservation.

Mitigation: As discussed, several witnesses testified, at trial and supporting summary judgment, to the ubiquitous nature of City Light facilities, including the poles and wires lining most streets. Most of the substations, poles, and wires are indisputably ugly. City neighborhoods, whether occupied by ratepayers or not, bear both the benefit (electricity)

and the burden (ugliness) of these facilities. Witnesses testified that neighborhood representatives seek out City Light art for mitigation, and that the utility's business is made easier by providing mitigation. In short, mitigation suits City Light's purposes.

The court drew the limit of mitigation too narrowly. No evidence refutes City Light's purpose in funding, for example, part of the lighted sculptures on the Ballard Bridge (App Q). But the court decided that even art that is adjacent to, rather than upon, a vacant City Light lot – e.g., Wave Rave Cave – does not serve a legitimate utility purpose of mitigating the neighborhood impact of its long-term vacant lot. RP 4/19 70:10-23. If any limit is set on City Light's choice of how to mitigate its own facilities, that limit should require only that the utility be able to show that City Light and the neighborhood view art as mitigation.

Public display: Under the ruling, City Light art may not be displayed in other public buildings, or in "permanent or traveling exhibits," CP 1584 ¶ 9, because in those locations, it is of benefit to the general public, as well as to ratepayers and City Light employees. But there is no reasonable basis for imposing distinctions on City Light's purposes that the utility itself does not make. The decision is in contrast to the right to display university-owned art in non-campus public settings, as well as to lend art more broadly than this court allows at CP 1584 ¶ 9. RCW

28B.10.027. The court's decision ignores the testimony of Margaret Pageler that utility art should be displayed more broadly, such as in neighborhood service centers and the mayor's office, where customers go. CP 1500:24-1501:3. The decision also ignores testimony of several witnesses that City Light employees do business throughout City offices. While it may be reasonable to order that City Light not place its art in another entity's permanent display, it is unreasonable to place greater limits on City Light than the state places on public universities.

Conclusion: The trial court's approach results in a piece by piece second-guessing of which art serves an approved nexus. More properly, however, City Light's view of how it uses art as a medium for reaching out to the public should be given the deference due to those conducting a proprietary business, in the absence of any challenge by the state auditor.

#### I. For want of a placard, was the art lost?

The trial judge questioned the absence of an educational plaque at McCaw Hall, based on personal experience, saying that while it "may be visually appealing, there's nothing that I remember seeing that tells me this demonstrates low-energy light." RP 4/20 18:17-22. But an inadequate placard is a basis for ordering better communication of City Light's ownership and purpose, not for invalidating an ordinance. To the extent the decision on McCaw or Benaroya halls or other public displays was

based on failure to convey City Light's conservation message, the appropriate remedy would be an order to prepare better placards.

#### J. The trial court's order to transfer funds is unreasonable

Having limited City Light's ownership and maintenance of art, the court ordered that all other artwork and amounts, including City Light funds held in the Municipal Art Fund, be transferred from the General Fund to the Light Fund. CP 1585 ¶ 10, 1602 ¶ 2. The parties stipulated to the time and manner in which that would occur, pending the outcome of appeal. CP 1628-1632. But there is no evidence that the City knowingly violated the limits of legislative or utility authority, or that the art in question has benefited the general fund so that its cost should be considered a tax refundable by the City. Almost no decision touching on these matters has been located in any jurisdiction. <sup>14</sup> The trial court made no ruling on "tax" or "benefit." It is unreasonable to try to unwind the past three years of City Light's 30 years of participation in One Percent for Art. To the extent the trial court ordered otherwise, it is in error.

<sup>&</sup>lt;sup>14</sup> The one case involving an art requirement that we have found is a California Supreme Court case in which that court upheld a municipal building code requirement of Culver City imposing an "art in public places" fee of 1% of the total building valuation on private development. "The requirement of providing art in an area of the project reasonably accessible to the public is, like other design and landscaping requirements, a kind of aesthetic control well within the authority of the city to impose." *Ehrlich v. City of Culver City*, 12 Cal.4<sup>th</sup> 854, 866, 911 P.2d 429, 50 Cal.Rptr.2d 242, *cert. denied*, 519 U.S. 929 (1996).

#### V. CONCLUSION

Both plaintiffs and the court focused on each specific piece of art, and while appreciation of art is admittedly highly personal, the result was that they lost focus on the "forest," that is, the categories of utility purpose into which the art falls. One is the choice to beautify certain spaces with anything from a Jacob Lawrence to a photograph of a turbine. Another is the choice to mitigate ugly, but essential, infrastructure with art that reaches out to different constituents or communities among ratepayers and citizens. A third is to use art to provide educational or environmental messages. Only the third category requires that the art show a direct relationship to what City Light does. Thus, "Skagit Streaming" requires a reasonable – not exacting – relationship to City Light's effect on salmon streams, but "Wave Rave Cave" should require only a mitigation purpose.

A trial that focuses on each piece of art inevitably confuses taste in art with the owner's goals in having the art. Here, the unfortunate result is a decision that partially overturns an ordinance without stating a reason and that far too narrowly limits City Light's purposes in funding art.

As the Washington Supreme Court said in *Tacoma v. Taxpayers* when rejecting limitations on a utility approach to conservation, "much has changed." There, the change concerned acknowledgment of the role of conservation as an energy resource. 108 Wn.2d at 688-89. Plaintiffs on the

other hand seek to keep City Light locked in the age of "bureaucratic philistines." This use of art for utility purposes is part of the evolution of the responsibility of utilities, whether private, public, or municipal, to become environmentally and aesthetically responsible and efficient in a variety of ways. But the trial court has overturned a valid ordinance and placed undue limitations on City Light's ability to carry out those responsibilities. The ruling should be reversed.

Dated this  $\frac{7^{1/2}}{\text{day of April 2005}}$ .

Respectfully submitted,

THOMAS A. CARR Seattle City Attorney

By:

William H. Patton, WSBA #5771 Rebecca C. Earnest, WSBA #13478 Attorneys for the City of Seattle

#### **APPENDIX**

- A. Findings of Fact and Conclusions of Law (May 21, 2004)
- B. Partial Judgment Pursuant to CR 54(b) (October 8, 2004)
- C. RCW 43.09.210
- D. Ch. 20.32 SMC
- E. RCW 35.92.050
- F. Order Denying Seattle's Motion for Partial Summary Judgment

  To Dismiss Allegations Related to "One Percent for the Arts"

  (March 31, 2004)
- G. Municipal Art Plan, 2001-2002 (Ex 45)
- H. Electric Gallery (Ex 62)
- I. Creston Nelson Substation project (Ex 65).
- J. Wave Rave Cave (Ex 67)
- K. Skagit Streaming (Ex 72)
- L. Dreaming in Color (Ex 288)
- M. Speaker Stick (Ex 346)
- N. Letter from the office of the Attorney General (Ex. 274)
- O. Temple of Power and Oculus Portals (Ex 67)
- P. WAC 480-100-223
- Q. Ballard Gateway (Ex 70)

# APPENDIX A

# FILED

KING COUNTY WASHINGTON

Honorable Sharon S. Armstrong

MAY 2 1 2004

# SUPERIOR COURT CLERK **EY** Marcella Parducci

#### SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RUD OKESON, DORIS BURNS, WALTER L. WILLIAMS and ARTHUR T. LANE. individually and on behalf of the class of all persons similarly situated.

**CLASS ACTION** 

NO. 02-2-05774-8SEA

Plaintiffs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: STREETLIGHT REMEDY AND PHASE I

v.

THE CITY OF SEATTLE.

Defendant.

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This matter is a class action under CR 23(b)(1) and (2) brought by ratepayers of Seattle City Light (other than the City of Seattle itself and those suburban cities with which Seattle City Light has franchise agreements) against the City of Seattle. The case came on for trial before the undersigned judge of this Court on April 12, 2004. The Court determined that certain issues, including those concerning (1) streetlights, (2) the 1% for Art program, (3) Seattle's legal expenses in this action and in the related Sonntag action, and (4) alleged general governmental expenses charged by Seattle to City Light, were to be tried to the Court without a jury in Phase I of the trial, and that remaining issues concerning whether City Light had been overcharged for services would subsequently be tried to a jury in Phase II.

Phase I commenced on April 15, 2004. The Court heard opening statements of counsel on that day and heard evidence on April 15, 19-21, and 28-29, 2004 and on May 3, 2004, and heard closing ORIGINAL

FINDINGS OF FACT AND CONCLUSIONS OF LAW-1-

arguments of counsel on May 5, 2004.

Plaintiffs, named class representatives Rud Okeson, Walter Williams, Arthur Lane, and Doris Burns, appeared personally and through their counsel of record David F. Jurca, Richard S. White and Jennifer S. Divine of the firm of Helsell Fetterman LLP. Defendant City of Seattle appeared through its counsel of record William H. Patton and Rebecca Earnest of the Seattle City Attorney's Office.

The witnesses who were called and testified at trial are listed in Exhibit A.

The exhibits that were offered, admitted into evidence, and considered by the court are listed in Exhibit B.

Based on the evidence presented, the Court now makes the following:

# FINDINGS OF FACT

#### A. General

- 1. Each of the plaintiffs is a present or former ratepayer of Seattle City Light. The Court has previously certified that for purposes of this litigation the four named plaintiffs are appropriate representatives of the class of all persons or entities who are or were at any time since December 24, 1999 ratepayers of Seattle City Light, other than the City of Seattle itself and the cities of Burien, Lake Forest Park, Sea-Tac and Shoreline.
- 2. Defendant City of Seattle is a municipal corporation and a first-class charter city.

  Pursuant to this status, Seattle has authority to operate a municipal electric utility. Seattle owns and operates Seattle City Light as a proprietary electric utility and as a department of the City. As a department of the City, City Light is subject to general ordinances, policies, and budget processes of the City. City Light operates in much the same manner as a proprietary business.
- 3. City Light finances are kept separate from the finances of Seattle's other governmental FINDINGS OF FACT AND CONCLUSIONS OF LAW-2

 operations. City Light's revenues are paid into, and its expenses are paid out of, the "Light Fund," whereas Seattle's other revenues and expenses are paid into or out of the "General Fund" or other funds or accounts of Seattle.

4. Seattle imposes the statutory maximum 6% utility tax on utilities operating within the City, including City Light. The tax payments go to the City's General Fund and are used to support the City's general governmental activities. The amount of such utility tax paid by City Light to the City in the year 1999 was \$21,791,151, in the year 2000 was \$24,002,685, in the year 2001 was \$30,648,910, and in the year 2002 was \$33,913,510.

# B. Streetlights

- 5. In November 1999 Seattle adopted Ordinance 119747, setting a new schedule of rates for City Light customers, effective as of December 24, 1999. The ordinance had the effect of shifting the costs of streetlighting in Seattle from the General Fund to City Light and its ratepayers. In its decision dated November 13, 2003, the Washington Supreme Court held that providing public streetlighting is a governmental function and that shifting the costs of streetlighting from Seattle's General Fund to City Light ratepayers constituted imposition of an unlawful tax on City Light ratepayers.
- 6. Ordinance 119747 adopted rate schedules that included an add-on, attributable to recovering a portion of Seattle's streetlighting costs, in the amount of .0705¢ per kwh to all non-streetlight rates for customers in Seattle. It was originally intended that the streetlight add-on would be increased from .0705¢/kwh to .0776¢/kwh as of March 1, 2002, but due to a series of other rate increases in 2001 the planned March 1, 2002 increase in the streetlight add-on did not take place. From December 24, 1999 to November 13, 2003 the amount of the streetlight add-on paid by non-streetlight ratepayers in Seattle was \$21,512,141. There has been no rollback or removal of the streetlight add-on since it went

FINDINGS OF FACT AND CONCLUSIONS OF LAW-3-

into effect on December 24, 1999, either before or after the date of the Supreme Court's decision in this case on November 13, 2003. Thus, after Ordinance 119747 went into effect on December 24, 1999, until November 13, 2003, non-streetlight ratepayers in Seattle paid an additional .0705¢/kwh, attributable to streetlighting, for each kwh of electricity for which they have been billed. This additional rate results in billings to ratepayers of approximately \$500,000 per month.

- 7. Meanwhile, from the time Ordinance 119747 went into effect on December 24, 1999 until the date of the Washington Supreme Court's decision in this case on November 13, 2003, City Light continued to prepare monthly bills (referred to in this litigation as "pseudo-bills") to the City's General Fund for streetlighting, although those bills were not sent. Those pseudo-bills were based on the Schedule T streetlight rates set forth in the ordinance, which were applicable to streetlight customers other than the City. Those rates did include the planned increase on March 1, 2002. City Light resumed billing the City for streetlighting on November 13, 2003. Since that date the City has been billed for streetlighting at the Schedule T rates. The total amount that the City's General Fund would have been billed for streetlighting from December 24, 1999 through November 13, 2003 based on the Schedule T rates reflected in the pseudo-bills is \$23,863,614.96.
- 8. Even if they had been applied throughout the period in question, the Schedule T rates would have been insufficient to recover the actual costs of public streetlighting in Seattle. The reasons for this included (1) the fact that the Schedule T rates reflected a "gradualism" adjustment to reduce the amounts otherwise payable for streetlighting and (2) the fact that there were substantial increases in the costs of purchased power in 2000 and 2001 that were not reflected in the Schedule T rates. The rates for other classes of service were increased substantially in a series of rate increases in 2001 as a result of the increases in the cost of purchased power in 2000 and 2001, but there were no such increases in the

Schedule T rates for streetlighting. Due primarily to the increases in the costs of purchased power in 2000 and 2001, during 2000 through 2003 no class of ratepayers paid the full cost of service despite the series of rate increases in 2001.

- 9. Based on the best available information, including the actual amount of streetlighting energy used in 2000, 2001, 2002 and 2003 as reflected in the pseudo-bills, the actual Seattle public streetlighting costs from January 1, 2000 to March 31, 2004 amounted to approximately \$33,218,052. Assuming the average monthly streetlighting costs in 2004 are the same as in 2003, the streetlighting costs for each additional month in 2004 after March are \$702,583.
- 10. Gradualism is a basic principle of ratemaking that applied to a number of different rates in the 1999 and 2001 ratemaking processes. It is a fundamental principle of ratemaking that the customer must know in advance what the rate will be so the customer can choose how much electricity to use. If gradualism cannot be applied to rates charged to the City's General Fund because of Accountancy Act principles, then rates previously charged to other governmental entities for streetlights and other electrical service must also be retroactively revised.
- 11. Virtually risk-free investments likely to be used for small amounts of cash accumulated monthly by residential ratepayers would be notes, passbook savings, money market accounts, or certificates of deposit. An average rate of return on investments of those types over the four-year period at issue here would be 2 percent per annum.
- 12. A reasonable proxy for short-term, secure investments by larger commercial and other institutional ratepayers can best be represented by the return Seattle receives on short-term cash investments. That rate for the four-year period averages 4.5 percent per annum.

## C. Mayor's Office

- 13. Seattle charged City Light \$142,784 in 2000, \$146,354 in 2001 and \$150,012 in 2002, and was projected to charge \$149,800 in 2003, for expenses of the Mayor's Office. In the absence of other evidence, it is reasonable to assume that Seattle is charging City Light approximately the same amount per month in 2004 as it did in 2003 for expenses of the Mayor's Office.
- 14. The Mayor and his office serve the general, overall interests of Seattle, not of City Light in particular. While none of the members of the Mayor's staff has primary responsibility for supervising or otherwise managing the affairs of City Light, Mayor's Office staff have provided analysis on power purchase and sales decisions, licensing applications, superintendent confirmation, the California energy crisis, and billing errors. The staff also works with other utilities across the country to develop energy policy. The Mayor's Office staff spends approximately 20% of its time on utility oversight, of which a significant percentage is oversight of City Light.
- 15. An independent consultant study recommended that the amount of Mayor and Council staff oversight of City Light matters be substantially increased and that those persons develop greater technical expertise in electrical energy matters.
- 16. The Superintendent of City Light is its Chief Executive Officer. The Mayor and his staff serve a general governmental function of oversight and coordination with other Seattle departments.

  While this activity may benefit City Light, it is of a general administrative nature and facilitates the Mayor's performance of his duties. The work of the Mayor's Office is governmental rather than proprietary in nature.
  - D. Office of Sustainability and Environment (OSE)

FINDINGS OF FACT AND CONCLUSIONS OF LAW- 6 -

17. The City charged City Light \$100,000 in 2001, \$100,000 in 2002, and \$153,900 in 2003

for expenses of the City's Office of Sustainability and the Environment. In the absence of other evidence, it is reasonable to assume that the City is charging City Light approximately the same amount per month in 2004 for OSE expenses as it did in 2003.

- 18. OSE was formed in 2000 from its predecessor in the Department of Administrative Services. OSE is the City's central policy and program development office for environmental issues. It works to develop an environmental policy framework for the whole City. OSE helps elected officials, City departments and other partners such as governments, institutions, businesses, households and citizens better understand and apply the principles and practices of sustainability to their work.
- 19. OSE's April 2003 Annual Progress Report lists numerous accomplishments that benefit Seattle as a whole, for example, "Develop Green Fleet initiative, Reduce pesticide use on City golf courses, Increase efficiency of parks' irrigation systems, Cut City paper use, Transition to flat-screen computer monitors; Develop Urban Forest Restoration initiative, Provide environmental stewardship program in community centers, Complete 'Greening Seattle's Affordable Housing' guide, Partner with Clean Air Agency to develop regional climate protection program." None of these efforts concern only City Light.
- 20. Within OSE's general mission, City Light uses several specific services, including technical expertise on reducing pesticide and herbicide use, greenhouse gas emissions, and truck fleet emissions. These are services that are critical to City Light operations. If it did not obtain this expertise from OSE, City Light would hire such expertise or buy the services elsewhere at greater expense. Other services, such as coordinating urban forest decisions with other Seattle departments, or participating in a coordinated response to the West Nile virus, serve primarily a general governmental function rather than the utility function of furnishing electricity to utility customers.

#### E. Small Business Assistance

- 21. The City charged City Light \$62,036 in 2002 and \$140,000 in 2003, and is budgeted to charge City Light \$166,000 in 2004, for expenses of the City's Small Business Assistance program.
- 22. The Small Business Assistance program was established by Ordinance 120888 in 2002 to facilitate the implementation of RCW 35.22.650. The purpose of the program is to train potential small-business contractors and subcontractors to be aware of and conversant with the public bidding process for City Light and other Seattle contracts. The program, which is operated by the Urban League of Metropolitan Seattle under a contract with Seattle, provides assistance to small, economically disadvantaged businesses, including firms owned by women and minorities, to help them compete more effectively.
- 23. City Light pays a portion of the training outreach program based on the amount of its capital improvements budget for any given year. While it is hoped that the program will produce a larger pool of contractors and subcontractors to bid on City Light contracts, and that the contractors who win the bids will be better able to complete their work, there is no evidence quantifying this benefit, and the benefit may be only speculative. The Small Business Assistance program serves a general governmental function, and there is insufficient nexus with the primary utility function of furnishing electricity to utility customers.

# F. Department of Planning and Development (DPD/DCLU)

24. The City charged City Light \$335,400 in 2000, \$450,000 in 2001, \$661,250 in 2002 and \$423,400 in 2003 for expenses of the City's Department of Design, Construction and Land Use (DCLU), now called the Department of Planning and Development. In the absence of other evidence, it is reasonable to assume that the City is charging City Light approximately the same amount per month in

FINDINGS OF FACT AND CONCLUSIONS OF LAW-8-

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2004 for DCLU expenses as it did in 2003.

25. DPD, formerly known as DCLU, is generally the construction planning and permitting arm of Seattle. DPD develops, administers, and enforces standards for land use, design, construction, and housing within the city limits. It is also responsible for long-range planning in Seattle. DPD develops policies and codes related to environmental protection, development, housing and community standards, including the Seattle Land Use Code, the State Environmental Policy Act (SEPA), the Seattle Shoreline Master Plan, the Environmental Critical Areas ordinance, the Seattle Building Code, the Seattle Mechanical Code, the Seattle Energy Code, the Stormwater, Grading and Drainage Control Ordinance, the Housing and Building Maintenance Code and the Seattle Noise Ordinance. Each year DPD approves over 23,000 land use and construction-related permits and performs approximately 80,000 on-site inspections. The work includes public notice and involvement for master use permits; shoreline review; design review; approval of permits for construction, mechanical systems, site development, elevators. electrical installation, boilers, furnaces, refrigeration, signs and billboards; annual inspections of boilers and elevators; home seismic retrofits; and home improvements workshops in the community. DPD also enforces compliance with community standards for housing, zoning, shorelines, tenant relocation assistance, just cause eviction, vacant buildings, and noise, responding to over 4,000 complaints annually. In June 2002 a number of long-range physical planning functions were added to the department's mission. including the Seattle Planning Commission. DPD is now responsible for monitoring and updating the City's Comprehensive Plan; evaluating regional growth management policy; developing sub-area and functional plans; preparing urban design plans; developing land use policy; and staffing the Seattle Planning Commission and the Seattle Design Commission.

26. In 1979 the City's Law Department issued an opinion letter to the City's Budget Director in
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FINDINGS OF FACT AND CONCLUSIONS OF LAW-9-

which the Law Department opined that the examination and approval of plans constitutes part of Seattle's process for issuance of a permit and represents a general governmental function administered by the Building Department, and that issuance of building permits is an exercise of the City's regulatory authority. The letter explained:

"Utilities invariably operate in an organized society where governmental services are provided. Many of these services assist utility operations, e.g., inspections of electrical wiring by building inspectors provide a safer, more efficient use of power; good streets make access to and servicing of utility poles and appurtenances more convenient than over natural terrain; and firefighters put out fires at transformers and in underground vaults saving expensive equipment and damage to the utility system. If indirect benefits were a foundation for using funds derived from the rate payers for a "public service industry", all appropriations for utility purposes would contain an allowance for the support of the general government and the severance contemplated by the phrase '...in any financial manner whatever' could not be given practical effect."

### The opinion letter concluded:

"In our opinion, your proposal for assessing the Light Fund a portion of the cost of 'checking and examining plans to insure compliance with the City's Energy Code provisions' would violate RCW 43.09.210, as interpreted by Attorney General's opinions and applied in actions taken pursuant to reports of audit examinations."

- Agreement entered into by DCLU and City Light, to support City Light's energy conservation program and green building program at a level above DPD's basic services. City Light's energy conservation program as developed through the energy code was supported for a number of years by the Bonneville Power Administration's conservation initiatives. When BPA ceased paying for energy code development and these conservation programs in the mid-1990's, City Light continued the programs through the MOA's with DPD.
- 28. Advancing the energy code refinements and enhancements and supporting the green building program provide substantial benefit to City Light because investment in conservation

 improvements on the front end is much more cost effective than retrofitting conservation measures into existing buildings.

29. If City Light performed these services itself, permit-seekers would be required to visit more than one City office at greater cost. These specific services facilitate the primary utility function of furnishing electricity to utility customers.

# G. Human Services Department

- 30. The City charged City Light \$258,169 in 2001 and \$765,307 in 2002 for expenses of the City's Human Services Department (HSD).
- 31. The primary function of the HSD is to assist senior citizens and low-income citizens.

  Within that mission, HSD has entered a Memorandum of Agreement to provide services that serve City
  Light purposes. Pursuant to the MOA, HSD provides eligibility screening and customer service delivery
  for City Light's low-income (including certain senior and disabled persons) rates and its Project Share.

  Using the HSD to administer these programs is more effective and less expensive for City Light than
  developing its own separate expertise and resources and allows more widespread application of the
  program.

# H. Office of Housing

- 32. The City charged City Light, or required City Light to incur, approximately \$1,813,000 in 2000, \$1,852,456 in 2001, \$1,898,768 in 2002, \$1,946,237 in 2003, and approximately \$498,723 through the first quarter of 2004, for expenses of the City's Office of Housing (OH), including conservation assistance provided by City Light to citizens served by OH and expenses of OH program administration.
- 33. The function of Seattle's Office of Housing is to promote the livability of housing in the City, for the city-wide benefit of Seattle's citizens. Among the services provided by OH is the promotion

FINDINGS OF FACT AND CONCLUSIONS OF LAW-11 -

of weatherization and other conservation programs to improve the quality, and lower the costs, of housing in the City.

34. City Light has engaged the OH, through a Memorandum of Agreement, to promote and facilitate City Light's standard weatherization programs, which are part of City Light's conservation programs, in low-income, single- and multi-family structures. The OH has much more extensive contacts with low-income housing developers and landlords than does City Light. It also has the ability to leverage other sources of funds to meet the full expense of installing conservation improvements. If City Light supported this program through its own staff, the effort would be less cost-effective. These services serve City Light's primary utility function of furnishing electricity to utility customers.

### I. Emergency Management

- 35. Seattle charged City Light \$236,488 in 2000, \$242,400 in 2001, \$248,460 in 2002, \$268,131 in 2003, and approximately \$67,033 through the first quarter of 2004, for expenses of the City's Emergency Management program.
- 36. Seattle's Emergency Management program originated in the Seattle Fire Department. In
  1991 the Mayor, seeking broader citywide participation and coordination, moved the City's emergency management function to the Department of Administrative Services (now called the Executive Services Department). Since 1997 the City's Emergency Management program has been a part of the Seattle Police Department.
- 37. The City's Emergency Management program is a section of the Special Operations Bureau of the Seattle Police Department devoted to citywide disaster preparedness, response, recovery and mitigation. Its purpose is to provide a coordinated response by City departments to any emergency that affects more than one department, such as earthquake, terrorist attack, disabling fire, or similar event. It

FINDINGS OF FACT AND CONCLUSIONS OF LAW- 12 -

places a strong emphasis on individual and community preparedness, and provides a key liaison function between the City and its state and federal emergency management counterparts. Among other things, it operates its Emergency Operations Center, which acts as a central command center by city officials and other support agencies during a serious emergency or disaster.

- 38. City Light takes part in the City's planning, training, "tabletop exercises," and drills that simulate actual emergencies. City Light also has an identified position in the Emergency Operations

  Center when the Response Plan is activated.
- 39. City Light has a major stake in emergency planning, through potential vulnerability of its electric transmission and distribution systems and the effect on other departments of government and on citizens if electricity is widely disrupted for an extended time. The Emergency Management program of the Seattle Police Department serves the primary utility function of furnishing electricity to utility customers.

# J. City Attorney's Office

- 40. The expenses of the City Attorney's Office for this litigation and the related Sonntag
  litigation have been charged entirely to City Light rather than to the City itself or its General Fund. The
  amounts of those expenses are as shown in Seattle's Stipulated Facts on Law Department Expenses.
- 41. The City of Seattle sued the State of Washington and others in the Sonntag litigation. The City of Seattle is the defendant in Okeson v. Seattle..
- 42. The Sonntag declaratory judgment action was initiated as a result of franchise negotiations with the City of Shoreline and other suburban cities served by City Light. Providing streetlights as part of the electric service was a precondition enunciated by the suburban cities to granting Seattle the electric service franchise in those communities. Without the ability to provide this service, Seattle was at risk of

losing these service areas to newly formed cities that had the ability, like Seattle, to establish their own electric utilities. Seattle pursued this litigation as a business decision for the benefit of City Light.

- 43. In the *Okeson* litigation Seattle seeks to defend City Light's business integrity in costeffective use of services that are available from other departments of the City, the stability of City Light's
  budget, and the integrity and stability of City Light rates.
- 44. The services of the City Attorney's Office in this litigation and the related *Sonntag* litigation therefore were intended to, and have, benefited City Light. The charges to date for these services are reasonable.

#### K. One Percent for the Arts

45. City Light is required to contribute funds to the City's Public Art program run by the Office of Arts and Cultural Affairs (formerly Seattle Arts Commission), through the City's One Percent For Art ordinance, Seattle Municipal Code Ch. 20.32, adopted in 1973. Under this ordinance, City Light is required to contribute to Seattle's Municipal Arts Fund one percent each year of the utility's capital improvement budget for construction within Seattle city limits. The Municipal Arts Fund, under the direction of the Office of Arts and Cultural Affairs, spends money to support Seattle's Public Art program to integrate art work and artists' visions into public settings, expand the public's experience with visual art, and create enduring public art projects. The City Light contributions fund site-integrated art works in conjunction with construction projects, the purchase of portable and free-standing art works that are displayed in City buildings and on public sites, and special projects such as publications, exhibitions, films, and artists-in-residence programs in City departments. City Light representatives work with the Office of Arts and Cultural Affairs to choose suitable art and art projects. Each piece of art purchased with City Light money becomes a physical asset of City Light. Many of

FINDINGS OF FACT AND CONCLUSIONS OF LAW- 15 -

these art works have considerable value and some have increased substantially in value since they were acquired.

- 46. The Office of Arts and Cultural Affairs earmarks all funds received from City Light within the Municipal Arts Fund, and accounts for those funds separately from funds contributed by other City departments. In the last four years from 2000 through 2003, the Office of Arts and Cultural Affairs has spent \$2,823,770.50 of City Light funds for public art projects. This includes amounts spent each year for art projects funded solely with City Light funds: \$407,438.99 in 2000, \$342,944.45 in 2001, \$624,562.91 in 2002, and \$357,964.30 in 2003.
- 47. The total also includes City Light funds expended each year for art projects funded by multiple departments based on a percentage allocated to City Light by the Office of Arts and Cultural Affairs. City Light's portion of these multi-funded projects was \$31,609.17 in 2000, \$91,337.83 in 2001, \$37,919.07 in 2002, \$57,374.17 in 2003, an additional \$111,000.00 spent for the "Salmon in the City" project and an additional \$25,000.00 spent for the Pine Street improvement project.
- 48. The approximately \$2.8 million total also includes \$100,000.00 spent on the Marion McCaw Hall "Dreaming in Color" art project. Although Exhibit 36 does not include funds spent on the "Dreaming in Color" light sculpture, City documents show that \$120,000.00 in City Light funds were allocated to the project, and Ms. Goldstein's testimony and various City documents demonstrate that the project was completed.
- 49. Pursuant to a Memorandum of Agreement, City Light contracts with the Office of Arts and Cultural Affairs to manage City Light's collection of art. In the past four years, City Light has paid \$303,135.10 in collection management expenditures for the management of City Light's portion of

Seattle's extensive portable art collection, and \$333,484.62 in costs allocated to City Light for project management expenses for City Light art projects other than the portable works collection.

- 50. Much of the approximately \$2.8 million in City Light funds spent by the Office of Arts and Cultural Affairs from 2000 through 2003 was spent to benefit the general public, not City Light ratepayers.
- 51. With respect to the numerous art projects funded with City Light funds from 2000 through 2003, the majority of such funds were spent on art purchases or art projects with a general governmental purpose, rather than a legitimate utility purpose. Only the following purchases and projects have a sufficient nexus to legitimate utility purposes:

Portable Artworks that are in City Light's permanent collection and are the physical asset of City Light

City Light Photographer-in-Residence (McCracken)

City Light's North Service Center renovation

City Light's South Service Center renovation

Creston Nelson Substation renovation and artwork

Boundary Dam documentary film

Electric Gallery substation wall (because it provides a pleasant work area for City Light employees)

Temple of Power gazebo at Newhalem Dam

Oculus Portals at Boundary Dam

Georgetown Steam Plant project

Website aspect of Skagit Streaming

FINDINGS OF FACT AND CONCLUSIONS OF LAW- 16 -

The remaining projects, including but not limited to Wall of Death, Wave Rave Cave, McCaw Hall light installation, Ballard Gateway Project, Galer Street Overpass Project, Salmon in the City, remaining expense of Skagit Streaming, Second Avenue Extension, and West Lake Union Pathway, have insufficient nexus to a utility purpose.

Based on the foregoing Findings of Fact the Court enters the following:

#### CONCLUSIONS OF LAW

- 1. Seattle, as a first-class charter city, has authority under RCW 35.92.050 and 35.22.280(15) to operate a municipal electric utility.
  - 2. Seattle City Light is a department of the City of Seattle. SMC 3.08.010.
- 3. The Superintendent of City Light, among other duties, manages and operates the light and power system; enforces and implements City ordinances, contracts, and rules relating to the department; and performs other duties as directed by the City. SMC 3.08.030.
- 4. The Washington Supreme Court in Okeson v. City of Seattle, 150 Wn.2d 540 (2003) held that neither Seattle Ordinance 119747 nor RCW 35.92.050 authorizes Seattle to incorporate the expenses of City streetlighting within electrical rates charged to the customers of City Light because Ordinance 119747 imposes a tax, not a regulatory fee. Seattle is required to refund to City Light the amount it would have paid in the "pseudo bills," \$23,863,614.96. City Light is required to refund to its ratepayers unlawfully collected amounts, consisting of \$21,512,141 from December 24, 1999 through November 13, 2003, together with a reasonable rate of return of 2% for residential ratepayers and 4.5% for institutional and larger commercial ratepayers. The application of these rates of return is reserved to a hearing on remedy at the conclusion of Phase II. The court also reserves to a hearing on remedy the issue of whether

FINDINGS OF FACT AND CONCLUSIONS OF LAW- 17 -

the approximately \$500,000 per month collected from ratepayers after November 13, 2003 pursuant to the .0705 cents/kwh add-on should be returned to ratepayers or held in the Light Fund to compensate for undercharging ratepayers for electricity during that same period.

- 5. Because City Light's imposition of illegal rates is neither an act of negligence nor a breach of contract, Seattle has not waived its sovereign immunity against the imposition of pre-judgment interest, and such interest is not allowed.
- 6. Additional streetlight costs sought by plaintiff from Seattle are not recoverable in this action. Plaintiff's claims under the RCW 43.09.210, RCW 80.28.080, RCW 80.28.090, .100, and RCW 80.28.010(1) were held to be moot by the *Okeson* court. The only streetlighting charges imposed under Ordinance 119747 that the Supreme Court found unauthorized were the streetlight costs passed on to ratepayers. City Light's practice of charging Seattle less than full cost for streetlighting was not before the *Okeson* court, the Court did not address what the streetlight rates should have been, and the decision does not require reimbursement by Seattle to City Light of such expenses. Furthermore, reimbursement by Seattle to City Light of these additional costs would constitute retroactive ratemaking and would require retroactive adjustment in other streetlight rates as well. As a matter of policy, such retroactive ratemaking would violate the fundamental principle of ratemaking that the customer must know in advance what the cost will be so the customer can choose how much electricity to use, and this court declines to contravene this principle.
- 7. The following services serve a general governmental function rather than the primary utility function of furnishing electricity to utility customers: Mayor's Office staff work; and Small Business Assistance program. Consequently the expenses of the Mayor's Office and the Small Business Assistance program may not be allocated to City Light, and Seattle's General Fund must refund to City

FINDINGS OF FACT AND CONCLUSIONS OF LAW-19 -

Light all such expenses charged to and paid by City Light since January 1, 2000.

- A portion of the following services serve a City Light function of furnishing electricity to utility customers: Office of Sustainability and Environment; Department of Planning and Development; Office of Housing; Department of Human Services, and Emergency Management. For example, OSE may properly charge City Light a reasonable allocation for expenses of specific services such as technical expertise on reducing pesticide and herbicide use, greenhouse gas emissions, and truck fleet emissions, but the expenses of general governmental functions of OSE such as coordinating urban forest decisions with other Seattle departments, or participating in a coordinated response to the West Nile virus, may not be charged to City Light. The proper allocation of these expenses to City Light shall be decided in Phase II of this trial.
- 9. City Light may permissibly purchase art or fund art projects to beautify its own offices and customer service facilities, but may not fund art that is displayed in other City offices or in permanent or traveling public exhibitions. City Light may not expend utility funds to purchase art or fund art projects that have the primary purpose of improving City Light's image in a particular neighborhood or community, or cultivating public relations. City Light may not spend utility funds for the purpose of mitigating a substation's appearance, when the primary purpose of the art is to provide artistic benefit to the surrounding neighborhood and the public as a whole. City Light may permissibly spend utility funds to educate the public about conservation, but the Office of Arts and Cultural Affairs may not use the conservation education rationale as justification for using City Light funds to support an art project merely because it mentions salmon, or contains illuminated art work. The Office of Arts and Cultural Affairs may not spend City Light funds on art or art projects that City Light could not fund itself.

- art works collections and permissible utility art projects described above as having a sufficient nexus to a legitimate utility purpose. All other amounts, which will be calculated in connection with final rulings on implementation of the remedy, shall be transferred from the General Fund to the Light Fund. The issue of whether non-portable installations now carried as a physical asset of City Light may be transferred to the City's ownership is reserved to later hearing on the remedy in this case.
- 11. The City's One Percent For Art ordinance, SMC Ch. 20.32, is invalid as applied to the City's proprietary electric utility, City Light. Seattle shall henceforth be prohibited from enforcing its One Percent For Art ordinance with respect to City Light. City Light itself is not prohibited from purchasing art or funding art projects, as long as proprietary utility funds are spent only on art or art projects with a close nexus to the utility's primary purpose of furnishing electricity to ratepayers.
- 12. The expenses of the City Attorney's Office in the *Okeson* and *Sonntag* litigation serve City Light. City Light is the real department-in-interest in both cases. These expenses are properly charged to City Light.
- 13. The details of the remedy in this case and its implementation are reserved to the conclusion of Phase II of the trial.

DATED this 21st day of May, 2004.

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Honorable Sharon S. Armstrong

FINDINGS OF FACT AND CONCLUSIONS OF LAW-21

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2	The following witnesses testified at trial, in approximate order of appearance:
3	Streetlight interest rates:
5	Glen Lee (City witness)
б	Dennis Conrad (plaintiffs' witness)
7	Other matters:
8 9	Plaintiffs called the following witnesses:
LO	1. Doris Burns, named plaintiff
11	2. Barbara Goldstein, Office of Arts and Cultural Affairs, City of Seattle
13	3. James P. Ritch, Deputy Superintendent for Finance and Administration, City Light (including
14	streetlight remedies)
L5 L6	4. Carol Everson, Director of Finance, City Light (largely streetlight remedies)
17	5. Dennis Conrad, plaintiffs' expert witness (streetlight remedies)
18	6. Art Oki, finance analyst, Seattle City Attorney's Office, by deposition
20	7. Margaret Pageler, by parts of discovery deposition; City added balance of discovery deposition
21	and all of subsequent preservation deposition
22	8. Carol Opatrny, by preservation deposition, direct testimony; City added all cross-examination
23	but objected to admission of Opatrny testimony
24 25	9. Jessica Ritts, legal assistant in plaintiffs' counsel's office
26	Defendant called the following witnesses:
27	1. Dwight Dively, Director of Finance, City of Seattle
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	FINDINGS OF FACT AND CONCLUSIONS OF LAW- 22 -

Exhibit A

#### EXHIBIT B

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Plaintiffs' Exhibits:

1, 25-30, 35-39, 44-74, 78-81, 83-91, 94, 94A, 96-98,

103-109, 112-115, 123, 140-146, 170-196;

For limited purpose: 40-43

Defendant's Exhibits:

249, 253, 256-271, 273-274; 277-289,

307-313, 345-346, 347 (illustrative purposes only), 348-349, 351-355, 356 (DiJulio CV only;

declaration refused),

357

FINDINGS OF FACT AND CONCLUSIONS OF LAW-24 -

# APPENDIX B

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Honorable Sharon S. Armstrong

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RUD OKESON, DORIS BURNS, WALTER L. WILLIAMS and ARTHUR T. LANE, individually and on behalf of the class of all persons similarly situated,

Plaintiffs,

THE CITY OF SEATTLE.

٧.

Defendant.

**CLASS ACTION** 

NO. 02-2-05774-8SEA

PARTIAL JUDGMENT PURSUANT TO CR 54(B)

The undersigned judge of this court previously entered Findings of Fact and Conclusions of Law Re: Streetlight Remedy and Phase I, dated May 21, 2004 ("Phase 1 FFCL"), and Findings of Fact and Conclusions of Law (Phase II), dated September 28, 2004 nunc pro tunc August 18, 2004 ("Phase 2 FFCL"). To implement those findings and conclusions the parties entered into the following stipulations: (1) Stipulation Regarding Refund Procedures and Other Remedy Issues, dated July 26, 2004 ("Remedy Stipulation"); (2) Stipulation Regarding One Percent for Art Remedies, dated July 28, 2004 ("Art Remedy Stipulation"); (3) Supplemental "Remedy" Stipulation Regarding Mayor's Office Debt Service, dated August 10, 2004 ("Supplemental Remedy Stipulation"); and (4) Corrective Addendum

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PARTIAL JUDGMENT PURSUANT TO CR 54(b) - 1



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to Remedy Stipulations, dated August 12, 2004 ("Corrective Addendum"). On September 14, 2004 the undersigned judge of this court issued an Order on Unresolved Non-Art Remedies and Attorney Fee Application ("Order"). On October 8, 2004, the parties are entering into a Stipulation Waiving Appeal Except on Art Rulings ("Appeal Stipulation"), subject to entry of this partial judgment.

The Court finds that the claims resolved by the findings, conclusions, stipulations and Order listed above are independent of and distinct from the claims remaining in this case and that it is in the public interest to enter judgment on the resolved claims at this time, since the prompt, final resolution of those claims is essential to the timely budgeting and financial planning for the City of Seattle (the "City") and to providing monetary refunds to hundreds of thousands of present and former Seattle City Light ("City Light") ratepayers who are members of the plaintiff class. Accordingly, there is no just reason for delay in entry of judgment on the resolved claims, and pursuant to CR 54(b) the Court directs that judgment be entered as set forth herein.

Now, therefore, based on the findings, conclusions, stipulations and Order listed above, it is ORDERED, ADJUDGED AND DECREED as follows:

- 1. The parties shall comply fully with the Remedy Stipulation, as amended by the Supplemental Remedy Stipulation and Corrective Addendum, all of which are approved and adopted by the Court as part of this Judgment. Copies are attached as Exhibits A, B and C, respectively. In particular, as provided in the Remedy Stipulation (as amended):
- A. The City's general fund shall pay the following amounts to City Light: (i) \$23,863,614.96, representing the amounts shown for streetlights in the monthly "pseudo-bills"



for the period from December 24, 1999 through November 13, 2003; (ii) \$684,769.00, representing Mayor's Office expenses improperly charged to City Light, plus \$65,829.00, representing compensation to City Light for pre-judgment loss of use of those funds, calculated at the rate of 4.5% per annum; and (iii) \$257,369.32, representing Small Business Assistance program expenses improperly charged to City Light, plus \$11,179.00, representing compensation to City Light for pre-judgment loss of use of those funds, calculated at the rate of 4.5% per annum. In addition, as provided in paragraph 3 of the Order, the City's general fund shall pay to City Light \$221,739.00 representing compensation for pre-judgment loss of use of the difference between the rates collected from customers for the streetlight tax and the unpaid pseudo-bills, calculated at the rate of 4.5% per annum; and

- B. The City shall make the above-described payments to City Light on the schedule set forth in the Remedy Stipulation, *i.e.*, \$6.2 million shall be paid by October 1, 2004, another \$6.2 million shall be paid by January 15, 2005, and the balance shall be paid as soon in 2005 as appropriate borrowing arrangements can be made but in any event not later than May 1, 2005; and
- C. City Light shall make refunds to present and former ratepayers in the manner and at the times described in the Remedy Stipulation. The "adjusted refund amount," as that term is used in paragraphs 2 and 3 of the Remedy Stipulation, is 0.0571¢ per kilowatthour. The computation of this amount is shown in Exhibit D, attached. The amount to which each ratepayer is entitled for "loss of use," as set forth in paragraph 2 of the Remedy Stipulation, shall be based on the "base refund rate" of 0.0705¢/kwh rather than the adjusted refund amount. In computing the adjusted refund amount, as shown in Exhibit D, \$750,000



representing a portion of the estimated administrative expenses of making the refunds is deducted from the total amount otherwise to be refunded to ratepayers. If the actual administrative expenses of making the refunds total less than \$750,000, the portion of the \$750,000 amount not spent on administrative expenses shall be retained by City Light and used for utility purposes, thereby benefiting ratepayers. Any administrative expenses in excess of \$750,000 shall be borne by City Light's Light Fund. The Minimum Check Refund Threshold Amount, as that term is used in paragraph 8 of the Remedy Stipulation, is \$5.00.

- 2. The parties shall comply fully with the Art Remedy Stipulation, which is approved and adopted by the Court as part of this Judgment. A copy is attached as Exhibit E. In accordance with that stipulation, (a) with respect to any pieces of its portable art works collection on display in other City departments, City Light shall comply with the requirements of paragraph 2 of the Art Remedy Stipulation in the manner and within the time period described in that paragraph, (b) the City and City Light shall transfer ownership of the art works and arts projects identified in Exhibit A attached to the Art Remedy Stipulation from City Light to another department of the City in the manner and within the time period described in paragraph 4 of that stipulation, and (c) in accordance with paragraphs 5 and 6 of that stipulation, the City will make the payments to City Light described in paragraphs 5 and 6 of the Art Remedy Stipulation. In addition,
- A. The City's One Percent for Art ordinance, SMC Ch. 30.32, is declared invalid as applied to City Light;
  - B. The City is prohibited from enforcing its One Percent for Art



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ordinance with respect to City Light;

- C. City Light, however, is not prohibited from purchasing art or funding art projects, as long as proprietary utility funds are spent only on art or art projects with a close nexus to the utility's primary purpose of furnishing electricity to its ratepayers; and
- D. City Light may continue to pay the City's general fund for the costs of maintaining City Light's portable art works collection and its other permissible utility arts projects.
- 3. As set forth in Conclusions of Law 20 and 21 of the Phase 2 FFCL, in the next budget cycle the City shall determine whether the composite or weighted average method of allocating any of the Finance & Administration, Technology Leadership, Data Backbone and Internet Services, or Citywide Web Team services provided to City Light by the City's Department of Information Technology should be used in allocating expenses of those services to City Light, and whether measuring the number of transactions should be used in allocating to City Light expenses of the City's Department of Executive Administration for Warrants Issuance and Bank Reconciliation Services provided to City Light, because these are more accurate allocation methodologies for each of the departments involved.
- 4. Out of the funds paid to City Light pursuant to this Judgment, City Light shall pay to plaintiffs' counsel \$3.5 million for attorney fees and \$152,246.00 for expenses, as provided in paragraph 6 of the Order. These sums shall be paid to plaintiffs' counsel within three banking days after entry of this Judgment.
  - 5. Out of the funds paid to City Light pursuant to this Judgment, City Light shall



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pay awards to plaintiffs Doris Burns and Walter L. Williams in the amount of \$5,000 each, as provided in paragraph 7 of the Order. These awards shall be paid within three banking days after entry of this Judgment and the City's receipt of their social security numbers and W-9 tax forms, by delivering to plaintiffs' counsel checks made payable to each of the award recipients in the designated amounts.

- 6. The amounts payable to City Light pursuant to this Judgment shall bear postjudgment interest at the City's interfund borrowing rate from the date this partial judgment is entered until paid.
- 7. The Court shall retain continuing jurisdiction over this matter for purposes of resolving any disputes that may arise concerning implementation of the remedies provided by this Judgment.

day of October, 2004

Superior Court Judge

Presented by:

HELSELIA FETTERMAN LLP

Attorneys for Plaintiffs

THOMAS A. CARR Seattle City Attorney

William H. Patton, WSBA #

Rebecca C. Earnest, WSBA # 13478

Assistant City Attorneys

Attorneys for Defendant City of Seattle



# EXHIBIT A

# RECEIVED Honorable Sharon S. Armstrong 04 JUL 27 PM 28 45

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SUPERIOR COURT CLERK
SEATTLE, WA

### SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RUD OKESON, DORIS BURNS, WALTER L. WILLIAMS and ARTHUR T. LANE, individually and on behalf of the class of all persons similarly situated,

Plaintiffs.

THE CITY OF SEATTLE,

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Defendant.

**CLASS ACTION** 

NO. 02-2-05774-8SEA

STIPULATION REGARDING REFUND PROCEDURES AND OTHER REMEDY ISSUES

Without waiving their right to appeal from any prior or subsequent decision of the Court, the parties stipulate as follows on implementing the Court's Findings of Fact and Conclusions of Law entered on May 21, 2004 ("Phase 1 FFCL"):

## A. Streetlight Refunds

1. The City's general fund will pay City Light the amounts shown for streetlights in the monthly "pseudo-bills" covering the period from December 24, 1999 through November 13, 2003, totaling \$23,863,614.96, as follows: \$6.2 million by October 1, 2004, as currently budgeted; \$6.2 million by January 15, 2005, as currently budgeted; and the balance as soon in 2005 as appropriate borrowing arrangements can be made but in any

STIPULATION REGARDING REFUND PROCEDURES AND OTHER REMEDY ISSUES - 1



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event not later than May 1, 2005. The City agrees that post-judgment interest will be paid, based on the City inter-pool borrowing rate from the date of judgment until paid. The parties disagree on whether pre-judgment interest must be paid on these amounts, and will address this issue in the "remedy" briefing described below. Plaintiffs intend to ask the Court to reconsider its prior rulings on pre-judgment and post-judgment interest, based on the recent decision in *Carrillo v. City of Ocean Shores*, Washington Court of Appeals No. 29735-3-II (July 13, 2004), and to require the City to pay post-judgment (as well as pre-judgment) interest at the rate of 12 percent per annum.

- 2. City Light will make refunds to ratepayers, in the manner and to the extent described below, to each customer of City Light who was a City Light ratepayer during the relevant time period. The base refund amount before adjustment is 0.0705 cents per kilowatt hour (kWh), which totals \$21,512,141 for total consumption of 30,513,675,164 kWh through November 13, 2003. The adjusted refund amount (as provided in Paragraph 3) will be multiplied by the kilowatt hours consumed by the ratepayer during the relevant time period, plus an amount for loss of use of the ratepayer's funds computed at the rate of 2 percent per annum for residential ratepayers and 4.5 percent per annum for all other ratepayers (unless the Court requires a different rate of interest in response to plaintiffs' request to reconsider its prior rulings on interest).
- 3. The base refund rate of 0.0705 cents/kWh will be adjusted downward by any administrative and related expenses of making refunds that the Court orders to be paid from the refund amount, and any amount that the Court orders to be paid from the refund amount for attorney fees and expenses for class counsel. For example, if the total amount of



administrative and attorneys' fees to be deducted from the refund amount were \$2 million and the relevant time period were deemed to end on November 13, 2003 (see ¶5 below), the adjusted refund amount would be 0.06395 cents per kWh. (\$21,512,141.00 - \$2,000,000.00 = \$19,512,141.00 ÷ 30,513,675,164 kWh = \$0.0006395/kWh).

- 4. The beginning date of the relevant time period is December 24, 1999.

  However, City Light states that it will be administratively simpler to use the first billing period (i.e., meter-read date) after January 1, 2000 as the beginning date for computing refund amounts, and to prorate back to December 24, 1999 based on the amount of the bill for the first billing period after January 1, 2000, rather than specifically calculating the last week of 1999 from the latest 1999 meter-read date forward. This alternative approach is agreeable to plaintiffs.
- 5. The City contends that the relevant time period ended on November 13, 2003, while plaintiffs contend that the relevant time period has not ended yet. This disagreement will be addressed by the parties in the "remedy" briefing in accordance with the briefing schedule set forth below.
- 6. The parties disagree as to who should pay for the administrative and related expenses of making the refunds described above; plaintiffs contend such expenses should be borne by the City's general fund, whereas the City contends those expenses (at least as an estimated total) should be subtracted from the class action award. This issue will be addressed by the parties in the "remedy" briefing described below. The issues regarding an award of attorney fees and expenses to plaintiffs' counsel will be addressed by the parties in the "fee request" briefing described below.

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- 7. Refunds to current ratepayers having active accounts will be made as a credit to the ratepayer's account. Refunds to ratepayers having inactive accounts will be made by check payable to the former account holder.
- 8. If an amount otherwise to be refunded by check is less than the Minimum Check Refund Threshold Amount, then the refund will not be made. Plaintiffs contend that the Minimum Check Refund Threshold Amount should be \$1, while City Light contends it should be \$5. This issue will be addressed in the "remedy" briefing described below. There is no minimum threshold amount for a refund to be made to a current ratepayer by a credit to the ratepayer's account.
- 9. City Light states that it writes off inactive accounts with delinquent balances at the quarter ending 90 days after the account is closed. Thus, if a customer closed the account in late February but did not pay, the account would be written off on June 30. If such a former customer contacts City Light during the refund period, the account will be retrieved manually, and any refund due will be set off against the amount owing. If the refund exceeds the amount of debt by the appropriate Minimum Check Refund Threshold Amount, that balance will be refunded to the former customer.
- 10. City Light will provide a written notice to each current ratepayer explaining the basis for and nature of the refund credits being applied to the ratepayer's account. The notice will be in a form agreed to by the parties or approved by the Court and is expected to be included as an insert in the ratepayer's bill for the cycle in which the refund is applied to the account.



- 11. In order to obtain a refund, a former ratepayer will be required to advise City Light, by mail (letter or postcard), fax, telephone, email, or posting on the Internet website maintained for the purpose, of the ratepayer's (1) name, (2) current address, (3) prior address(es) within the City or prior City Light account number(s), (4) the approximate time periods the ratepayer was located at the prior address or had the prior City Light account number, and (5) current phone number, fax number and/or email address for contact purposes ("Refund Entitlement Information").
- approved by the Court, addressed to former ratepayers at (1) their last known address within the City for those whose accounts were closed less than one year before the date of mailing and (2) any forwarding address outside the City shown in City Light's records, regardless of length of time since City Light obtained the address. The notice will explain the basis for and nature of the refund and explain that the ratepayer may submit the Refund Entitlement Information to City Light by the means specified above, and may invite the former ratepayer to telephone City Light at the Call Center number for further information about the refunds or refund procedures.
- 13. City Light will establish an Internet website, in a form agreed to by the parties or approved by the Court, describing the availability of refunds and inviting former ratepayers to submit the Refund Entitlement Information by the means specified above. The website will be linked on the City Light and the general City of Seattle home pages.
- 14. City Light will place written notices, in a form agreed to by the parties or approved by the Court and on multiple dates to be agreed to by the parties or approved by



the Court, in the Seattle Times, the Seattle Post-Intelligencer, the Eastside Journal, the Everett Herald, the Tacoma News Tribune and the Bremerton Sun newspapers, describing the availability of refunds and inviting former ratepayers to submit the Refund Entitlement Information by the means specified above.

- 15. City Light will specify in all notices the telephone and fax numbers and email and website addresses that ratepayers should contact to provide Refund Entitlement Information.
- 16. The parties intend to cooperate with each other in good faith and will jointly encourage local newspapers to publish, and local television and radio stations to air, news reports informing former ratepayers about the availability of refunds and the procedures for obtaining them. However, paid advertising about such matters is not required, except as set forth in paragraph 14 above.
- The mailing of notice to former ratepayers, the publishing of the Internet website and the first published notice in each of the newspapers identified above will occur within 30 days or as soon as practicable after approval by the parties or the Court of the form and content of the mailed notice, the Internet website and the newspaper notice. The parties intend that the forms of notice be coordinated with each other to achieve maximum impact.
- 18. In order to be entitled to a refund, a former ratepayer must submit the Refund Entitlement Information to City Light within one year after notice is published in the various specified forms. Any refunds not claimed within the refund period will be retained by City Light as part of its operating account and used for utility purposes, thereby benefiting



ratepayers by making future rate adjustments to raise revenue unnecessary to the extent of the unclaimed refunds.

- practicable and to current non-residential ratepayers as soon as practicable and to current non-residential ratepayers as soon as practicable thereafter. The parties expect that residential ratepayers will be credited no later than December 31, 2004. However, that expectation is premised on the 75 days City Light requires to calculate a refund "rate," develop specifications, and program and test the rate in the billing system after the final total amount to be refunded is known, plus the 60 days needed to complete the entire residential billing cycle. If the final information is not known in time to complete these processes before December 31, then the residential refunds will be completed as soon thereafter as practicable. Court approval will be sought for any further delay, based upon a showing why further delay is necessary. Credit refunds to current non-residential ratepayers will be made following the residential refunds and are expected to be made no later than March 31, 2005. However, any delay in the residential refund schedule may affect the nonresidential refund schedule. In that case, nonresidential refunds will be made as soon after residential refunds as practicable.
- 20. City Light will send refund checks to former ratepayers as soon as practicable after receiving Refund Entitlement Information from them, which is usually expected to be within 30 days. No refund check to a former residential ratepayer is required to be sent prior to the first date that credit refunds are made to current residential ratepayers, and no refund check is required to be sent to a former non-residential ratepayer prior to the first date that a credit refund is made to current non-residential ratepayers.

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- 21. Plaintiffs' counsel are entitled to monitor the status and progress of the refunds to be made by City Light and the receipt and processing of Refund Entitlement Information from former ratepayers. City Light will provide monthly reports to plaintiffs' counsel addressing the status and progress of refunds, and will at the least provide notice upon completion of the following steps: 1) provision of notice about the court's decision, refunds, who is eligible, how/when refunds will be provided; 2) credits to residential bills completed; 3) credits to commercial customers completed; 4) quarterly updates on refund checks for one year plus one quarter, consistent with the time period to ask for/receive refund checks. These reports may be by email if convenient to the parties, and may be posted on the website if appropriate.
- 22. The streetlights section of this stipulation also applies to *City of Seattle et al. v.*Sonntag et al., King County Superior Court Cause No. 01-2-11689-4SEA.

#### B. Mayor's Office

23. In the Phase I FFCL the Court ruled that expenses of the Mayor's Office may not be charged to City Light. The City confirms that in accordance with that ruling it has stopped charging such expenses to City Light effective April 30, 2004. The City's general fund will reimburse the Light Fund for all Mayor's Office expenses paid by City Light since January 1, 2000. These expenses through April 30, 2004 total \$643,367, as follows: \$142,784 in 2000, \$146,354 in 2001, \$148,354 in 2002, \$154,842 in 2003, and \$51,433 in 2004. The City's general fund will also pay interest, or an amount for loss of use of the funds, as determined by the court, which will be calculated from the end of the calendar year in which City Light paid the relevant amount (but from April 30 for the 2004 payment) until the general fund refunds that amount. Unless the Court rules that a different rate is



applicable (in light of the *Carrillo v. City of Ocean Shores* decision cited above), the rate will be computed at the City's average inter-pool borrowing rate of 4.5 percent per annum from the appropriate beginning date to the date of judgment and at the City's current inter-pool borrowing rate from date of judgment until paid.

#### C. Small Business Assistance

Assistance program may not be charged to City Light. The City confirms that in accordance with that ruling it has stopped charging such expenses to City Light effective April 30, 2004. The City will reimburse the Light Fund, from appropriate non-City Light resources, for all Small Business Assistance expenses paid by City Light since the program was established in 2002. These expenses through April 30, 2004 total \$257,369.32, as follows: \$62,036 in 2002, \$140,000 in 2003, and \$55,333 in 2004. The City will also pay interest, or an amount for loss of use of the funds, as determined by the court, calculated from the end of the calendar year in which City Light paid the relevant amount (but from April 30 for the 2004 payment) until the City refunds that amount to City Light. Unless the Court rules that a different rate is applicable (in light of the *Carrillo v. City of Ocean Shores* decision cited above), the rate will be computed at the City's average inter-pool borrowing rate of 4.5 percent per annum from the appropriate beginning date to the date of judgment and at the City's current inter-pool borrowing rate from date of judgment until paid.



P.O. Box 21846/Seattle. WA 98111-3846 (206) 292-1144

#### D. <u>Art</u>

25. The parties expect to reach agreement on many, if not all, of the issues regarding implementation of the Court's rulings concerning the One Percent for Art program.

To the extent agreement is reached, it will be expressed in a separate stipulation. To the extent agreement is not reached, unresolved issues may be addressed in briefing in accordance with the briefing schedule described below.

#### E. Briefing Schedules

- 26. The briefing schedule for unresolved Phase 1 "remedy" issues, other than Art and attorney fees, is as follows: opening briefs, July 28, 2004; responsive briefs, August 5, 2004; no reply briefs.
- 27. The briefing schedule for unresolved One Percent for Art issues is as follows: opening briefs, July 30, 2004; responsive briefs, August 9, 2004; no reply briefs.
- 28. The briefing schedule for plaintiffs' motion for an award of attorney fees and expenses is as follows: motion, July 29, 2004; response, August 6, 2004; reply, August 13, 2004.
- 29. Oral argument on remaining "remedy" and Art issues and on plaintiffs' motion for attorney fees and expenses will be held on August 19, 2004, at 1:30.

### F. Phase 2 Issues

30. The parties will try to reach agreement on any Phase 2 issues resulting from the Court's forthcoming decisions, or will set a briefing and hearing schedule as appropriate.

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Richard S. White, WSBA #4195
Jennifer S. Divine, WSBA #22770

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THOMAS A. CARR Seattle City Attorney

William H. Patton, WSBA # 5771

Rebecca C. Earnest, WSBA # 13478

Assistant City Attorneys

Attorneys for Defendant City of Seattle

# EXHIBIT B

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KING COUNTY SUPERIOR COURT CLERK SEATTLE: WA RHOnorable Sharon S. Armstrong

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RUD OKESON, DORIS BURNS, WALTER L. WILLIAMS and ARTHUR T. LANE, individually and on behalf of the class of all persons similarly situated,

Plaintiffs,

THE CITY OF SEATTLE.

Defendant.

**CLASS ACTION** 

NO. 02-2-05774-8SEA

SUPPLEMENTAL "REMEDY"
STIPULATION REGARDING MAYOR'S
OFFICE DEBT SERVICE

Without waiving their right to appeal from any prior or subsequent decision of the Court, the parties hereby supplement their previously filed Stipulation Regarding Refund Procedures And Other Remedy Issues, dated July 26, 2004 ("Remedy Stip."), as follows:

1. The Court determined, following the Phase 2 trial, that the City improperly charged City Light for debt service on space occupied by the Mayor's Office in 2003 and 2004. The City confirms that in accordance with that ruling it has stopped charging City Light for such Mayor's Office debt service effective as of April 30, 2004, and that the amount of Mayor's Office debt service charged to City Light in 2003 was \$30,737 and in 2004 through April 30, 2004 was \$10,265. The parties agree that the remedy for charges to City

SUPPLEMENTAL "REMEDY" STIPULATION REGARDING MAYOR'S OFFICE DEBT SERVICE - 1



1001 Fourth Avenue, Suite 4200 P.O. Box 21846/Seattle, WA 98111-3846 (206) 292-1144

Light for Mayor's Office debt service in 2003 and 2004 should be similar to the remedy for the other charges to City Light for Mayor's Office expenses that were addressed in paragraph B23 of the Remedy Stip.

- 2. Accordingly,
- (a) the amount set forth in paragraph B23 of the Remedy Stip. for Mayor's Office expenses paid by City Light in 2003 should be increased by \$30,737, the amount of Mayor's Office debt service charged to City Light in 2003;
- (b) the amount set forth in that paragraph for Mayor's Office expenses paid by City Light in 2004 through April 30, 2004 should be increased by \$10,265, representing Mayor's Office debt service charged to City Light in 2004 through that date; and
- (c) the total amount set forth in that paragraph for Mayor's Office expenses paid by City Light from January 1, 2000 through April 30, 2004 should be increased by \$41,002.
- 3. As a result of the foregoing increases, paragraph B23 of the Remedy Stip. is hereby amended to read as follows:
  - "23. In the Phase I FFCL the Court ruled that expenses of the Mayor's Office may not be charged to City Light. The City confirms that in accordance with that ruling it has stopped charging such expenses to City Light effective April 30, 2004. The City's general fund will reimburse the Light Fund for all Mayor's Office expenses paid by City Light since January 1, 2000. These expenses through April 30, 2004 total \$684,369, as follows: \$142,784 in 2000, \$146,354 in 2001, \$148,354 in 2002, \$185,579 in 2003, and \$61,698 in 2004. The City's general fund will also pay interest, or an amount for loss of use of the funds, as determined by the court, which will be calculated from the end of the calendar year in which City Light paid the relevant amount (but from April 30 for the 2004 payment) until the general fund refunds that amount. Unless the Court rules that a different rate is applicable (in light of the Carrillo v. City of Ocean Shores decision cited above), the rate will be computed at the City's average inter-pool



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borrowing rate of 4.5 percent per annum from the appropriate beginning date to the date of judgment and at the City's current inter-pool borrowing rate from date of judgment until paid."

4. In all other respects, the Remedy Stip. Is unchanged by anything in this Supplemental Stipulation.

Dated this 10th day of August, 2004.

HELSELL FÉTTERMAN LLP

David F. Jurca, WSBA #2015

Attorneys for Plaintiffs

THOMAS A. CARR Seattle City Attorney

William H. Patton, WSBA # 5771

Rebecca C. Eamest, WSBA # 13478

Assistant City Attorneys

Attorneys for Defendant City of Seattle



# EXHIBIT C

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.AL COUNTY SUPERIOR COURT

## SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RUD OKESON, DORIS BURNS, WALTER L. WILLIAMS and ARTHUR T. LANE, individually and on behalf of the class of all persons similarly situated,

Plaintiffs,

THE CITY OF SEATTLE,

Defendant.

**CLASS ACTION** 

NO. 02-2-05774-8SEA

CORRECTIVE ADDENDUM TO REMEDY STIPULATIONS

There is an arithmetic error in adding the annual figures for Mayor's Office expenses in ¶B23 of the Stipulation Regarding Refund Procedures and Other Remedy Issues, dated July 26, 2004, and in the restated ¶B23 in ¶3 of the Supplemental "Remedy" Stipulation Regarding Mayor's Office Debt Service, dated August 10, 2004. Both "total" figures should be increased by \$400. Accordingly, the "total" figure in ¶B23 in the July 26 stipulation should be \$643,767, and the "total" figure in the restated ¶B23 in the August 10 stipulation should be \$684,769.



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Attorneys for Plaintiffs

THOMAS A. CARR Seattle City Attorney

William H. Patton, WSBA # 5771

Rebecca C. Eamest, WSBA # 13478

Assistant City Attorneys Attorneys for Defendant City of Seattle

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CORRECTIVE ADDENDUM TO REMEDY STIPULATIONS - 2

P.O. Box 21846/Seattle, WA 98111-3846 (206) 292-1144

# EXHIBIT D

#### Computation of Adjusted Refund Amount

Streetlight tax paid by ratepayers	\$21, 512,141
Administrative expense	- 750,000
Portion of atty fees attributable to streetlight refund (91% of \$3,500,000 = \$3,185,000)*	- 3,185,000
Portion of atty expenses attributable to streetlight refund (91% of \$152,246 = \$138,544)*	- 138,544
Portion of awards to Burns & Williams attrib. to refund (91% of \$10,000 = \$9,100)*	- 9,100
Net ratepayer refund	\$17,429,497
Total kWh load subject to streetlight tax	30,513,675,16 <b>4</b> kWh
Adjusted refund amount = \$17,429,497 ÷ 30,513,675,164 kWh	= 0.0571¢/kWh
Loss of use compensation (est. thru Dec 2004)**	+ \$2,568,960
Total payable to ratepayers (net ratepayer refund plus loss of use)	\$19,998,457
Gross ratepayer refund (total streetlight tax paid plus loss of use)	\$24,081,101

<sup>\*</sup> Portion attributable to streetlight refund is based on ratio of gross ratepayer refund to total amount to be paid by City to City Light pursuant to partial judgment, calculated on the following page.

<sup>\*\*</sup> Loss of use compensation for each individual customer will be based on the appropriate rate (4.5% or 2%), applied to 0.0705 times the kWh billed. Payment of the refund amount excluding loss of use will be based on the .0571¢/kWh rate.

#### Calculation of Portion Attributable to Streetlight Refund

Streetlight pseudo-bill amount	\$23,863,617
Loss-of-use on difference between pseudo-bills and amounts paid by ratepayers	221,739
Mayor's office + prejudgment loss-of-use	750,598
Small business assistance + prejudgment loss-of-use	268,548
Impermissible art + prejudgment interest	1,040,137
Art cash reserve + interest earned	393,228
Total	\$26,537,867
Ratio of gross ratepayer refund to total amount payable to City Light = \$24,081,101 ÷ \$26,528,675 = 91%	

# EXHIBIT E

### IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

RUD OKESON, DORIS BURNS, WALTER L. WILLIAMS and ARTHUR T. LANE; individually and on behalf of the class of all persons similarly situated,

Plaintiffs,

VS.

THE CITY OF SEATTLE,

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Defendant.

**CLASS ACTION** 

No. 02-2-05774-8SEA

STIPULATION REGARDING ONE PERCENT FOR ART REMEDIES

Without waiving their right to appeal from any aspect of the Court's rulings, the parties stipulate as follows on implementing the One Percent for Art portion of the Court's Findings of Fact and Conclusions of Law entered on May 21, 2004:

#### A. General

- 1. The Court made the following rulings with which the City will comply throughout any appellate process relating to the One Percent for Art program:
- a. The City's One Percent for Art ordinance, SMC Ch. 30.32, is declared invalid as applied to the City's proprietary electric utility;

STIPULATION REGARDING
ONE PERCENT FOR ART REMEDIES - 1

Thomas A. Carr Seattle City Attorney 600 Fourth Avenue, 10th Floor Seattle, WA 98104-1877 (206) 684-8200

- b. Seattle is prohibited from enforcing its One Percent for Art ordinance with respect to City Light;
- c. City Light, however, is not prohibited from purchasing art or funding art projects, as long as proprietary utility funds are spent only on art or art projects with a close nexus to the utility's primary purpose of furnishing electricity to its ratepayers;
- d. City Light may continue to pay the general fund for the costs of maintaining City Light's portable art works collection and its other permissible utility arts projects.

#### B. <u>Specific Remedies</u>

- 2. Within one year after the Court's order on art remedies becomes final, after any appeals from that order, City Light shall accomplish one of the following for any pieces of its portable art works collection on display in other City departments:
  - a. return the City Light portable art work to City Light facilities or storage; or
  - b. transfer ownership of the art work to another City department or to a third party, at a price equal to the art work's true and full value, as determined by an independent appraisal, offer at auction, or similar means of determining what the market will pay for the work, or if the City believes it would be needlessly expensive or inefficient to obtain an independent appraisal, at a price equal to the book value at which the work is carried on the books of the Office of Arts and Cultural Affairs, which is generally measured by cost of acquisition plus increases at the rate of the Consumer Price Index (as adjusted if the piece is damaged); or

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- 3. City Light may accommodate requests from museums or similar non-profit agencies for a temporary loan of any of its portable art works, without charge, so long as the loan is for a period not longer than nine months and provided that the non-profit agency agrees to pay the cost of installing and returning the loaned portable art work, to pay City Light for any damage or loss of the City Light art work while it is on loan, and to credit City Light as owner of the work.
- 4. Within 90 days after the Court's order on art remedies becomes final, after any appeals from that order, the City and City Light shall transfer ownership of impermissible art

works and arts projects identified in the spreadsheet in Exhibit A to this stipulation from City Light to another department of the City.

- 5. Within that same time period, the Light Fund will be reimbursed a total of \$941,312, plus interest as described below, from other City funds for the transfer of ownership of the impermissible art works and projects set forth on Exhibit A to this stipulation.

  Reimbursement to the Light Fund will bear simple interest from the date City Light acquired each art work or project to the date the City reimburses the Light Fund, at the average of the City's cash pool earnings rate for the period from time of acquisition to the time of transfer of ownership, unless the Court rules that a different rate of interest is applicable in light of the Carrillo v. City of Ocean Shores decision, Washington Court of Appeals No. 29735-3-II (July 13, 2004).
- 6. Within 90 days after the Court's order on art remedies becomes final, after any appeals from that order, the City will transfer to the Light Fund \$354,633.42 in cash reserves contributed by City Light pursuant to the One Percent for Arts ordinance and now held in the Municipal Art Fund. The City's Office of Arts and Cultural Affairs states that during the period applicable to this lawsuit, these funds have earned interest at the City cash pool rate, but the interest has not been credited to the departmental accounts. Therefore, the City will pay interest on the transferred cash reserves at the rate the reserves have earned from the time those funds were transferred from the Light Fund to the Municipal Arts Fund to the time of returning the reserves to the Light Fund

#### DATED this 28th day of July 2004.

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THOMAS A. CARR Seattle City Attorney

By:

WILLIAM H. PATTON, WSBA # 5771 REBECCA C. EARNEST, WSBA #13478

Assistant City Attorneys

Attorneys for Defendant City of Seattle

HELSELL FETTERMAN

By:

DAVID F. JURCA, WSBA #2015 JENNIFER S. DIVINE, WSBA #22770 RICHARD WHITE, WSBA #4195

Attorneys for Plaintiffs

STIPULATION REGARDING
ONE PERCENT FOR ART REMEDIES - 5

Thomas A. Carr Seattle City Attorney 600 Fourth Avenue, 10th Floor Seattle, WA 98104-1877 (206) 684-8200

### EXHIBIT A

Updated 7/7/04
Public Art Project Expenditures
For the Years 2000 - May 21, 2004

**SCL - Only Funded Projects** 

<u>.                                      </u>		Total Expenditures				Project
Project#	Project Desc	to Date	SCL_	Other	Status	Туре
VA0001	SEATTLE COLLECTS 2000	\$84,966	\$84,966	\$0	closed	PW
VA0002	SCL PHOTOGRAPHER IN RESIDENCE	\$20,001	\$20,001	\$0	closed	PW
VA0011	PRINTWORKS	\$135,432	\$135,432	\$0	closed	PW
VA0012	SEATTLE COLLECTS	\$312,158	\$312,158	\$0	closed	PW
VA0013	City Light AIR 2002	\$4,301	\$4,301	\$0	closed	SP
VA0014	UNION SUBSTATION WALL	\$85,332	\$85,332	\$0	in progress	PW
VA0015	Interbay Substation	\$41	\$41		closed	sw
VA0016	X-Seattle Collects 2002	\$0	\$0		closed	PW
VA0017	X-Print Works 2002	\$0	\$0		closed	PW
	Neighbrhd Art Opportunity Fund/ART					
VA0018	PARTNERS	\$5,805	\$5,805	\$0	in progress	PW
VA0021	NORTHWEST MASTERS PROGRAM	\$83,078	\$83,078		closed	PW
VA0023	SEAFAIR AND TORCHLIGHT PARADE	\$59	\$59	\$0	closed	SP
VA0946	URBAN COLLABORATIONS: 1994	\$94,483	\$94,483	\$0	closed	SP
VA0952	X-NORTH SERVICE CENTER	\$5,702	\$5,702	\$0	closed	SW
VA0953	X-SOUTH SERVICE CENTER	\$3,004	\$3,004	\$0	closed	SW
VA0962	X-96 SEATTLE ARTISTS	(\$898)	(\$898)	\$0	closed	PW
VA0963	X-PUBLIC ARTS SEATTLE	(\$10)	(\$10)	\$0	closed	SP
VA0966	X-SEATTLE ARTIST 1997	\$831	\$831	\$0	closed	PW
VA0972	ARTIST IN RESIDENCE 1997	\$212,629	\$212,629	\$0	closed	SP
VA0973	RENO	\$52,103	\$52,103	\$0	in progress	sw
VA0975	X-PORTABLE WORKS 1998	\$5,343	\$5,343		closed	PW
VA0976	X-SODO URBAN ARTS CORRIDOR	\$245	\$245		closed	SW
VA0982	X-A.T.O.D. RESTORATION	\$2,479	\$2,479	\$0	closed	sw
VA0983	X-WALL OF DEATH	\$1,417	\$1,417	\$0	closed	sw
VA0985	X-CITY LIGHT PORTABLE WORKS	\$31,600	\$31,600	\$0	closed	PW
	BOUNDARY DAM DOCUMENTARY			<u></u> -	-	
VA0991	FILM	\$109,691	\$109,691	\$0	closed	SP
VA0992	X-FACE OF THE ARTIST	\$17,175	\$17,175	\$0		PW
VA0994	X-PRINTWORKS	\$25,679	\$25,679		closed	PW
VA0995	SECOND AVE EXTENSION	\$11;568	\$11,568	\$0		sw
VA0996	X-SPEAKERS' STICK	\$5,611	\$5,611	\$0	closed	PW
SCL Only Totals		\$1,309,825	\$1,309,825			<del>-  </del>

SCL Multi-funded Projects	ed Projects						:	
-	-	Total						SC! Amount
		Expenditures				Project	SCL Amount	ton
Project#	Project Desc	to Date	SCL	Other	Status	Туре	Permissible	Dormiccible
	ARTS UP- NEIGHBORHOOD							T CI IIII S SINIC
VA0993	COLLABORATION	\$543,726	\$357,651	\$186,075	in progress	S	\$35.765	\$321,886
VA1987	WEST LAKE UNION	\$140,164	\$16,990	\$123,174 closed	closed	MS	0\$	\$16,990
VA1991	SALMON IN THE CITY-21 CENTURY	\$221,750	\$110,875	\$110,875 closed	closed	SP	OŞ.	\$110.875
VA1999	HATCH COVERS/UTILITY ELEMENTS	\$65,080	\$21,477	\$43,604 closed	closed	MS.	\$21 477	\$0
VA2962	PINE ST IMPROVEMENT	\$175,392	\$19,402	\$155,990 closed	closed	NS.	0\$	\$19.402
VA3991	SEATTLE CITY HALL CIVIC CENTER	\$789,847	\$62,356	\$727,491	in progress	SW	0\$	\$62,356
VA4992	MARION OLIVER MCCAW HALL	\$135,882	\$39,406	\$96,476	\$96,476 lin progress	SW	\$0	\$39,406
VA700:I	BALLARD GATEWAY	\$76,006	\$14,441	\$61,565  closed	closed	SW	0\$	\$14,441
VA7002	UNIVERSITY WAY MULTI-MODAL	\$87,540	\$28,013	\$59,527	\$59,527 In progress	SW	(0\$)	\$28,013
VA7003	X-MAYORAL MEDALS	\$20,050	\$9,825	\$10,226 dosed	pesop	PW	\$9.825	80
VA7004	X-UNION STATION TRIANGLE	\$16,886	\$16,886	0\$	\$0 closed	SW	0\$	\$16,886
VA7011	Education & Outreach	\$219,637	\$59,302	\$160,335	\$160,335 in progress	SP	0\$	\$59,302
VA7021	Sustainability Award	\$20,519	\$10,259	\$10,259 closed	closed	Μd	\$10,259	\$0
VA7981	X-MILLENIUM BOOK	\$8,317	\$2,079	\$6,238 closed	closed	SP	\$2,079	\$0
VA7982	X-SEATTLE CENTER MILLENIUM FES	\$13,468	\$2,963	\$10,505  closed	closed	ΡW	\$2,963	\$0
VA7991	CULTURAL CONFERENCE	\$16,633	0\$	\$16,633	closed	SP	0\$	0\$
VA7992	GALER ST OVERPASS	\$127,117	\$71,186	\$55,932	closed	SW	0\$	\$71.186
VA7993	X-LINDEN AVE SWALE	\$3,727	\$1,863	\$1,863	closed	SW	\$1,863	\$
VA7994	X-MASTER OF GLASS	\$3,726	\$1,863	\$1,863 closed	closed	Μd	\$1,863	<b>%</b>
VA8943	X-SEATTLE SYMPHONY HALL	\$2,000	\$336	\$1,664	closed	SW	0\$	\$336
VA8991	BEACON V	\$13,447	.\$5,537	\$7,910	pesojo	SW	0\$	\$5,537
VAG00SCLCM	SCL Collection Management	\$219,688	\$219,688	\$0	\$0 project # superceded	CM	\$219,688	\$0
Multifunded with SCL Total	SCL Total	\$2,920,604	\$1,072,398	\$1,848,206			\$305,782	\$766,616

**Grand Totals** 

KEY PW: Portable Works SP: Special Projects, e.g. media-based, community-based, temporary SW: Permanently-sited artworks

\$941,312

\$1,440,911

\$1,848,206

\$2,382,224

\$4,230,430

## APPENDIX C

other documents kept, or required to be kept, necessary to isolate and prove the validity of every transaction; all statements and reports made or required to be made, for the internal administration of the office to which they pertain; and all reports published or required to be published, for the information of the people regarding any and all details of the financial administration of public affairs. [1995 c 301 § 9; 1965 c 8 § 43.09.200. Prior: 1909 c 76 § 2; RRS § 9952.]

School districts budgets to be in compliance with: RCW 28A.505.120.

43.09.205 Local government accounting—Costs of public works—Standard form. The state auditor shall prescribe a standard form with which the accounts and records of costs of all local governments shall be maintained as required under RCW 39.04.070. [1995 c 301 § 10; 1987 c 120 § 4.]

accounts for each fund or activity—Exemption for agency surplus personal property. Separate accounts shall be kept for every appropriation or fund of a taxing or legislative body showing date and manner of each payment made therefrom, the name, address, and vocation of each person, organization, corporation, or association to whom paid, and for what purpose paid.

Separate accounts shall be kept for each department, public improvement, undertaking, institution, and public service industry under the jurisdiction of every taxing body.

All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, shall be paid for at its true and full value by the department, public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution, or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another.

All unexpended balances of appropriations shall be transferred to the fund from which appropriated, whenever the account with an appropriation is closed.

This section does not apply to agency surplus personal property handled under RCW 43.19.1919(5). [2000 c 183 § 2; 1965 c 8 § 43.09.210. Prior: 1909 c 76 § 3; RRS §

accounts for public service industries. Separate accounts shall be kept for every public service industry of every local government, which shall show the true and entire cost of the countries of description than the cost of the countries of the countries.

43.09.230 Local government accounting—Annual reports—Comparative statistics. The state auditor shall require from every local government financial reports covering the full period of each fiscal year, in accordance with the forms and methods prescribed by the state auditor, which shall be uniform for all accounts of the same class.

Such reports shall be prepared, certified, and filed with the state auditor within one hundred fifty days after the close of each fiscal year.

public debt of every local government, to which power has statement of all receipts and expenditures by any public institution; and (4) a statement of all expenditures for labor the officers from all sources; all accounts due the public income, of each and every public service industry owned and operated by a local government; (2) a statement of the entire been delegated by the state to create a public debt, showing relations consultants, with the identification of each consultant, compensation, and the terms and conditions of each rized form, of all collections made, or receipts received, by treasury, but not collected; and all expenditures for every purpose, and by what authority authorized; and also: (1) A the purpose for which each item of the debt was created, and the provisions made for the payment thereof; (3) a classified The reports shall contain accurate statements, in summastatement of all costs of ownership and operation, and of all agreement or arrangement; together with such other information as may be required by the state auditor.

The reports shall be certified as to their correctness by the state auditor, the state auditor's deputies, or other person legally authorized to make such certification.

Their substance shall be published in an annual volume of comparative statistics at the expense of the state as a public document. [1995 c 301 § 12; 1993 c 18 § 2; 1989 c 168 § 1; 1977 c 75 § 41; 1965 c 8 § 43.09.230. Prior: 1909 c 76 § 5; RRS § 9955.]

Finding—Purpose—1993 c 18: "The legislature finds and declares that the use of outside consultants is an increasing element in public sector labor relations. The public has a right to be kept informed about the role of outside consultants in public sector labor relations. The purpose of this act is to help ensure that public information is available." [1993 c 18 § 1.]

43.09.240 Local government accounting—Public officers and employees—Duty to account and report—Removal from office—Deposit of collections. Every public officer and employee of a local government shall keep all accounts of his or her office in the form prescribed and make all reports required by the state auditor. Any public officer or employee who refuses or willfully neglects to perform such duties shall be subject to removal from office in an appropriate proceeding for that purpose brought by the attorney general or by any prosecuting attorney.

Every public officer and employee, whose duty it is to

## APPENDIX D

resolution a description of the property proposed to be improved by such fill, the estimate of the cost of the same, and stating that such cost is to be assessed against the property benefited thereby, and shall fix a time not less than thirty (30) days after the first publication of the resolution as specified in this section within which protests against such proposed improvement may be filed in the office of the City Clerk. The Council shall in such resolution, or in the ordinance providing for such improvement, declare the mode of making payment for such portion of the cost and expense of such improvement as shall be chargeable against such private property. At the time named in such resolution, the Council shall proceed to consider such resolution and report of the Board of Public Works on the matters referred to it in such resolution, together with all protests filed against the improvement, if any such protests be filed, and if the Council shall notwithstanding such protests and after full hearing thereof, if any protestant shall ask for such hearing, determine that it is necessary to fill such private property, or any portion or portions thereof, as a sanitary measure, the Council shall then or at a subsequent time proceed to enact an ordinance providing for such improve-

(Ord. 35083 § 3, 1915.)

### 20.20.040 Establishment of local improvement district.

Whenever the Council shall order any such improvement to be made, it shall in the ordinance ordering the same establish a local improvement district to be called "Local Improvement District No...," which shall include all the property found by the Council as aforesaid to require such fill as a sanitary measure.

(Ord. 35083 § 4, 1915.)

20.20.050 Modes of payment.

A. There shall be two (2) modes of making payment for such portion of the cost and expense of the improvements provided for in this chapter, as shall be chargeable against the local improvement district created as provided in this chapter: "immediate payment" and "payment by bonds." The mode adopted shall be the mode set forth in the resolution declaring the intention of the Council to make the improvement, if such resolution specifies the mode; if such resolution fails to specify the mode, then it shall be the mode specified in the ordinance ordering the improvement.

B. In all cases where the mode of "payment by bonds" is directed, the assessments shall be payable in equal annual installments the number of which shall be less by two (2) than the number of years the bonds or warrants may run.

C. Such bonds by their terms shall be made payable on or before a date not to exceed twelve (12) years from and after the date of the issue of such bonds, which latter date may be fixed by resolution or ordinance by the City Council provided that whenever the improvement shall lie wholly or partly within the boundaries of any commercial waterway district, organized and existing under the provisions of Chapter 243 of the Laws of 1907, of the State of Washington, and the acts amendatory thereof, such bonds may be made payable on or before a date not to exceed twenty-two (22) years from and after the date of the issue of such bonds. Such bonds shall bear interest at the rate provided by the ordinance ordering the improvement, but not exceeding eight (8) percent per year, such interest to be payable annually. Each bond shall have attached thereto interest coupons for each interest payment. (Ord. 35083 § 5, 1915.)

#### 20.20.060 Applicability of Ord. 53493.

Ordinance 53493,1 approved August 5, 1927, shall apply to all improvements made under the provisions of this chapter and to all proceedings relating to such improvements and to the making, collection and enforcement of special assessments therefor, and to the mode of paying for the same, except insofar as the same shall be in conflict with this chapter.

(Ord. 66638 § 1, 1936: Ord. 35083 § 6, 1915.)

 Editor's Note: Ord. 53493 is not included in this codification as it is presently undergoing comprehensive revision.

#### Subtitle II Public Works

Chapter 20.32
ART IN PUBLIC WORKS
CONSTRUCTION

#### Sections:

20.32.010 Purpose. 20.32.020 Definitions.

20.32.030 Funds for works of art.

20.32.040 Office of Arts and Cultural Affairs—Authority.
20.32.050 Municipal Arts Fund.

#### 20.32.010 Purpose.

The City accepts a responsibility for expanding public experience with visual art. Such art has enabled people in all societies better to understand their communities and individual lives. Artists capable of creating art for public places must be encouraged and Seattle's standing as a regional leader in public art enhanced. A policy is therefore established to direct the inclusion of works of art in public works of the City.

(Ord. 102210 § 1, 1973.)

#### **20.32.020 Definitions.**

- A. "Office" means the Office of Arts and Cultural Affairs.
- B. "Commission" means the Seattle Arts Commission.
- C. "Construction project" means any capital project paid for wholly or in part by the City to construct or remodel any building, structure, park, utility, street, sidewalk, or parking facility, or any portion thereof, within the limits of The City of Seattle.
- D. "Eligible fund" means a source fund for construction projects from which art is not precluded as an object of expenditure.
- E. "Municipal Arts Plan" means the plan required by Section 20.32.040 A.
- F. "Administrative costs" means all costs incurred in connection with the selection, acquisition, installation and exhibition of, and publicity about, City-owned works of art.

(Ord. 121006 § 11, 2002: Ord. 117403 § 1, 1994: Ord. 105389 § 1, 1976: Ord. 102210 § 2, 1973.)

#### 20.32.030 Funds for works of art.

All requests for appropriations for construction projects from eligible funds shall include an amount equal to one (1) percent of the estimated cost of such project for works of art and shall be accompanied by a request from the Office of Arts and Cultural Affairs for authorization to expend such funds after the same have been deposited in the Municipal Arts Fund. When the City Council approves any such request, including the one (1) percent for works of art, the appropriation for such construction project shall be made and the same shall include an appropriation of funds for works of art, at the rate of one (1) percent of project cost to be deposited into

the appropriate account of the Municipal Arts Fund. Money collected in the Municipal Arts Fund shall be expended by the Office of Arts and Cultural Affairs for projects as prescribed by the Municipal Arts Plan, and any unexpended funds shall be carried over automatically for a period of three (3) years, and upon request of the Office of Arts and Cultural Affairs, carried over for an additional two (2) years. Any funds carried over for three (3) years, or upon special request for five (5) years, and still unexpended at the expiration of such period shall be transferred to the General Fund for general art purposes only; provided, that funds derived from revenue or general obligation bond issues or from utility revenues or other special purpose or dedicated funds shall revert to the funds from which appropriated at the expiration of said three (3) or five (5) year period.

(Ord. 121006 § 12, 2002: Ord. 105389 § 2, 1976: Ord. 102210 § 3, 1973.)

### 20.32.040 Office of Arts and Cultural Affairs—Authority.

To carry out its responsibilities under this chapter, the Office of Arts and Cultural Affairs shall:

- A. Prepare, adopt and amend with the Mayor's approval a plan and guidelines to carry out the City's art program, which shall include, but not be limited to a method or methods for the selection of artists or works of art and for placement of works of art;
- B. Authorize purchase of works of art or commission the design, execution and/or placement of works of art and provide payment therefor from the Municipal Arts Fund. The Office of Arts and Cultural Affairs shall advise the department responsible for a particular construction project of the Office's decision, in consultation with the Seattle Arts Commission, regarding the design, execution and/or placement of a work of art, funds for which were provided by the appropriation for such construction project;
- C. Require that any proposed work of art requiring extraordinary operation or maintenance expenses shall receive prior approval of the department head responsible for such operation or maintenance:
- D. Promulgate rules and regulations consistent with this chapter to facilitate the implementation of its responsibilities under this chapter.
  (Ord. 121006 § 13, 2002: Ord. 105389 § 3, 1976:

Ord. 102210 § 4, 1973.)

20.32.050 Municipal Arts Fund.

There is established in the City Treasury a special fund designated "Municipal Arts Fund" into which shall be deposited funds appropriated as contemplated by Section 20.32.030, together with such other funds as the City Council shall appropriate for works of art, and from which expenditures may be made for the acquisition and exhibition of works of art consistent with the plan specified in Section 20.32.040A, and for Office of Arts and Cultural Affairs staff costs and administrative costs (as defined in SMC Section 20.32.020 F) that are associated with developing and implementing the Municipal Arts Plan, but not the cost of maintaining Cityowned art work, which maintenance cost may be paid from the Cumulative Reserve Subfund or such other source(s) as may be specified by ordinance. Separate accounts shall be established within the Municipal Arts Fund to segregate receipts by source or, when so directed by the City Council, for specific works of art. Disbursements from such fund shall be made in connection with projects approved by the Seattle Arts Commission on vouchers approved by the Director of the Office of Arts and Cultural Affairs.

(Ord. 121006 § 14, 2002: Ord. 117403 § 2, 1994: Ord. 116368 § 242, 1992: Ord. 105389 § 4, 1976: Ord. 102210 § 5, 1973.)

## Chapter 20.36 GIFTS OF ART—ACCEPTANCE BY MAYOR

**Sections:** 

20.36.010 Acceptance by Mayor.

20.36.010 Acceptance by Mayor.

In accordance with the following procedures, the Mayor is authorized for and on behalf of the City to accept gifts of works of art for display in or on property owned or occupied by the City:

- A. Before accepting a gift of work of art pursuant to the authority of this chapter, the Mayor shall consult with the head of the City department or departments responsible for the premises where such work of art will be displayed and shall also obtain from the Seattle Arts Commission, or a duly designated committee thereof, its recommendation as to whether such gift of work of art should be accepted.
- B. No gift shall be accepted pursuant to the authority of this chapter which will require substantial

expenditures for protection from theft or damage, maintenance or operation.

- C. Any gift accepted pursuant to the provisions of this chapter must be offered to the City unconditionally, except that the donor may impose any or all of the following conditions:
- 1. Specify the location where the work of art shall be displayed and/or specify reasonable conditions for the display of such work of art;
- 2. Specify reasonable conditions as to the care and protection of the work of art, provided such conditions do not require the expenditure of substantial funds in order to comply therewith; and
- 3. Specify that a sign or placard be placed near the work of art identifying the donor and/or the person or persons or event which such work of art commemorates or in whose memory or memories such work was donated.
- D. The Mayor shall manifest his acceptance of any such gift of work of art on behalf of the City by issuing a certificate of acceptance to the donor and by filing a copy of such certificate with the City Clerk. The provisions of this chapter shall not apply to the acceptance of gifts of works of art which are made to the Seattle Public Library and which are accepted by the Board of Library Trustees pursuant to RCW 27.12.210.

(Ord. 116368 § 243, 1992; Ord. 107578 § 1, 1978.)

### Chapter 20.38 APPRENTICESHIP PROGRAM

**Sections:** 

20.38.005 Apprentice utilization.

20.38.010 Definitions. 20.38.020 Powers.

20.38.030 Waivers or reductions of goals.

#### 20.38.005 Apprentice utilization.

On public works contracts with an estimated cost of One Million Dollars (\$1,000,000) or more, the Director is authorized to require that up to fifteen (15) percent of the contract labor hours be performed by apprentices enrolled in training programs approved or recognized by the Washington State Apprenticeship and Training Council (SAC). Furthermore, it is the City's intent that, on public works projects with an apprentice utilization requirement, there shall be a goal that twenty-one (21) percent of the apprentice labor hours be performed by minori-

## APPENDIX E

struction of municipal improvements. [1985 c 445 § 8; 1965 c 7 § 35.92.030. Prior: 1957 c 288 § 4; 1957 c 209 § 4; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.030.]

Eminent domain by cities: Chapter 8.12 RCW.

35.92.040 Authority to acquire and operate public markets and cold storage plants-"Public markets" defined. A city or town may also construct, acquire, and operate public markets and cold storage plants for the sale and preservation of butter, eggs, meats, fish, fruits, vegetables, and other perishable provisions. Whenever the words "public markets" are used in this chapter and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderateincome housing. [1990 c 189 § 4; 1965 c 7 § 35.92.040. Prior: 1957 c 288 § 5; 1957 c 209 § 5; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.040.]

35.92.050 Authority to acquire and operate utilities.

A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain and operate works, plants, facilities for the purpose of furnishing the city or town and its inhabitants, and any other persons, with gas, electricity, and other means of power and facilities for lighting, including streetlights as an integral utility service incorporated within general rates, heating, fuel, and power purposes, public and private, with full authority to regulate and control the use, distribution, and price thereof, together with the right to handle and sell or lease, any meters, lamps, motors, transformers, and equipment or accessories of any kind, necessary and convenient for the use, distribution, and sale thereof; authorize the construction of such plant or plants by others for the same purpose, and purchase gas, electricity, or power from either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within the city or town and regulate and control the use and price thereof. [2002 c 102 § 3; 1985 c 445 § 9; 1965 c 7 § 35.92.050. Prior: 1957 c 288 § 6; 1957 c 209 § 6; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.050.]

ings-Severability-2002 c 102: Sec notes following Purpose-RCW 35.92.010.

35.92.052 First class cities operating electrical facilities-Participation in agreements to use or own high voltage transmission facilities and other electrical gener. ating facilities—Terms—Limitations. (1) Except as provided in subsection (3) of this section, cities of the first class which operate electric generating facilities and distribution systems shall have power and authority to participate and enter into agreements for the use or undivided ownership of high voltage transmission facilities and capacity rights in those facilities and for the undivided ownership of any type of electric generating plants and facilities, including, but not limited to, nuclear and other thermal power generating plants and facilities and transmission facilities including, but not limited to, related transmission facilities, to be called "common facilities"; and for the planning, financing, acquisition, construction, operation, and maintenance with (a) Each other, (b) electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the regulatory commission of any other state, to be called "regulated utilities"; (c) rural electric cooperatives, including generation and transmission cooperatives in any state; (d) municipal corporations, utility districts, or other political subdivisions in any state; and (e) any agency of the United States authorized to generate or transmit electrical energy. It shall be provided in such agreements that each city shall use or own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction of or additions or improvements to the facility and shall own and control or provide for the use of a like percentage of the electrical transmission or output.

(2) A city using or owning common facilities under this section may issue revenue bonds or other obligations to finance the city's share of the use or ownership of the

common facilities.

(3) Cities of the first class shall have the power and authority to participate and enter into agreements for the use or undivided ownership of a coal-fired thermal electric generating plant and facility placed in operation before July 1, 1975, including related common facilities, and for the planning, financing, acquisition, construction, operation, and maintenance of the plant and facility. It shall be provided in such agreements that each city shall use or own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by the city for the acquisition and construction of or additions or improve ments to the facility and shall own and control or provide for the use of a like percentage of the electrical transmission of output of the facility. Cities may enter into agreements under this subsection with each other, with regulated utilities with rural electric cooperatives, with utility districts, with electric companies subject to the jurisdiction of the regulator ry commission of any other state, and with any powe marketer subject to the jurisdiction of the federal energy regulatory commission.

(4) The agreement must provide that each participal shall defray its own interest and other payments required t be made or deposited in connection with any financin undertaken by it to pay its percentage of the money ful

## APPENDIX F

#### IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

RUD OKESON, DORIS BURNS, WALTER L. WILLIAMS and ARTHUR T. LANE; individually and on behalf of the class of all persons similarly situated,

Plaintiffs.

THE CITY OF SEATTLE.

Defendant.

**CLASS ACTION** 

02-2-05774-8SEA No. DENVING ORDER GRANTING SEATTLE'S MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS ALLEGATIONS RELATED TO "ONE PERCENT FOR THE ARTS"

(proposed)

THIS MATTER came before the Court on the City of Seattle's Motion for Partial Summary Judgment to Dismiss Allegations Related to "One Percent for the Arts." The Court has heard the arguments of counsel and has considered the following documents that have been provided by the parties:

1. Declaration of Barbara Goldstein, and the following Exhibits thereto:

Exhibit 1 – Letter to Gary Zarker from Susan Trapnell,

Exhibit 2 - Memo re: utility hatchcovers,

Exhibit 3 - Photograph of hatchcover,



DENUING

ORDER GRANTING SEATTLE'S MOTION FOR PARTIAL SUMMARY JUDGMENT DISMISSING ALLEGATIONS RELATED TO "ONE PERCENT FOR THE ARTS" - 1

Thomas A. Carr Seattle City Attorney 600 Fourth Avenue, 10th Floor Seattle, WA 98104-1877 (206) 684-8200

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DENYING
ORDER GRANTING SEATTLE'S MOTION FOR
PARTIAL SUMMARY JUDGMENT DISMISSING ALLEGATIONS
RELATED TO "ONE PERCENT FOR THE ARTS" - 2

Thomas A. Carr Seattle City Attorney 600 Fourth Avenue, 10th Floor Seattle, WA 98104-1877 (206) 684-8200

DENVINE ORDER GRANTING SEATTLE'S MOTION FOR PARTIAL SUMMARY JUDGMENT DISMISSING ALLEGATIONS RELATED TO "ONE PERCENT FOR THE ARTS" - 3

Thomas A. Carr Seattle City Attorney 600 Fourth Avenue, 10th Floor Seattle, WA 98104-1877

- 4. Plaintiff's Opposition;
- 5. Declaration of Jessica Ritts, with attachments;
- 6. City's Reply;
- 7. Plaintiffs' Supplemental Brief in Opposition;
- 8. Declaration of Jennifer Divine in Opposition.

The City's motion seeks a ruling that, as a matter of law, City Light's participation in the City's One percent for the Arts program is a permissible utility proprietary activity and plaintiff's claim in this regard should be dismissed.

As a matter of law, the court concludes that only certain of the City Light's artrelated activities have a proprietary function related to the utility's purpose of providing
electricity to ratepayers. These are art expenditures used to beautify employee
workspaces, to beautify customer service areas where City Light transacts business, and
to educate the public about conservation. As a matter of law, City Light may not expend
its funds to cultivate public relations. There is a genuine issue of material fact as to
whether offsetting the negative appearance of facilities (e.g. substations) serves a
legitimate utility purpose or instead benefits the public as a whole. The remaining
activities require further factual determinations, e.g. whether advertising serves a
proprietary rather than governmental purpose if the utility is a monopoly. The legitimate
expenditures do not necessarily amount to 1% of City Light's capital expenditures in a
given year. For these reasons,

IT IS HEREBY ORDERED that the City's motion for summary judgment on the One Percent for the Arts program is denied.

ORDER DENYING SEATTLE'S MOTION FOR PARTIAL SUMMARY JUDGMENT DISMISSING ALLEGATIONS RELATED TO ONE PERCENT FOR THE ARTS-4 DATED this 31st day of March, 2004.

Honorable Sharon S. Armstrong

ORDER DENYING SEATTLE'S MOTION FOR PARTIAL SUMMARY JUDGMENT DISMISSING ALLEGATIONS RELATED TO ONE PERCENT FOR THE ARTS-5

## APPENDIX G

2001-2002 Municipal Art Plan City of Seattle

Approved:

Paul Schell, Mayor, City of Seatts

Date:

JULY 12, 2001

### Table of Contents

Executive Summary	Page 4
Municipal Art Plan Process	Page 6
Seattle City Light	Page 7
Fleets and Facilities	Page 16
Department of Parks and Recreations	Page 19
Seattle Center	Page 22
Seattle Public Utilities	Page 23
Seattle Transportation Department	Page 31
Other Projects	Page 35
Financial Summary	Page 37

Seattle Arts Commission 312 First Avenue North, Seattle, WA 98109 206. 684.7171

#### Executive Summary: 2001-2002 Municipal Art Plan

"The City of Seattle accepts a responsibility for expanding public experience with visual art. Such art has enabled people in all societies to better understand their communities and individual lives." Seattle Municipal Code Chapter 20.32: Art in Public Works Construction

For almost thirty years, the Seattle Arts Commission has provided public art in a variety of forms and settings to Seattle's residents and visitors. The public art program has used the preamble of the Municipal Code section as its guiding principal: that the arts are a means of understanding who we are.

The Seattle Arts Commission has built its public art program with a goal of providing people with a variety of artist experiences as they go about their daily lives. We have commissioned large-scale sculpture for prominent public settings. We have woven art into our buildings, streetscapes and infrastructure. We display our portable artworks as a "museum without walls" in public buildings citywide. And, we commission artists to create ephemeral work in the public realm. We view visual art as something that everyone owns and we relish the opportunities it offers for discovery and discourse.

The 2001-2002 Municipal Art Plan incorporates a variety of projects in a range expressive forms. The ideas that bind these projects together are community building, partnership and environmental awareness. Our continuing and new projects build on the priorities established by our citizen-planners and policy-makers. These projects will enhance neighborhoods and explore issues that we hold important as a community.

During the 1970s, the Seattle Arts Commission pioneered a unique program of placing artists on the "design team" with architects, engineers and landscape architects. These partnerships insured that art was integrated into the design of our buildings and infrastructure. The design team approach has been extremely successful and has been emulated by cities around the United States. Beyond design teams, however, over the last few years the Seattle Arts Commission embarked on a new program: placing artist "in-residence" in other City departments and community settings. In 1997 and 1998 three artists, Lorna Jordan, Buster Simpson, and Peter DeLory were in residence at Seattle Public Utilities. In 1998, artist Dan Corson began a residency at Seattle City Light. The presence of these artists in the City's two utilities has resulted in greater partnerships between the Seattle Arts Commission, Seattle Public Utilities and Seattle City Light. Artist residencies have resulted in a variety of project initiative ranging from portraits of City workers, to live video-streamed depictions of wildlife observed in the aggregate ponds downstream from the Newhalem Dam, to the design of major infrastructure such as the "greening" of Belltown's Vine Street and the restoration of Longfellow Creek in West Seattle. New artist residencies are identified within this year's Municipal Art Plan and will continue to guide some of our efforts.

The 2001/2002 Municipal Art Plan contains 66 projects including 28 new projects. It describes new collaborative initiatives with other City departments: temporary artworks

bringing attention to the issues surrounding endangered Chinook salmon, a megawatt clock measuring the City's use of electricity; streetscape improvements in Ballard and the University District, artistic enhancements to the "Potlatch" Trail, a pedestrian and bike trail that links South Lake Union to Elliott Bay. The plan also describes community-oriented efforts such as Arts Up, a program that encourages creative collaboration between community groups and artists working in all media.

During 1999/2001 the Seattle Arts Commission embarked on a number of new financial partnerships that will continue this biennium. In West Seattle, Donald Fels is completing the second phase of the West Seattle Cultural Trail project, a large sculptural installation at Terminal 107 that explores the theme of work on the Duwamish River. This project has received substantial support from the Port of Seattle. During 2001 and 2002, the Seattle Arts Commission will continue managing the public art program for Seattle Public Library. This program matches % for Art from the City's Libraries for All bonds with funds raised by the Library Foundation. This biennium the Seattle Arts Commission also hopes to embark on a similar effort with the Pacific Northwest Aquarium.

In addition to the projects outlined in the 1999-2000 Municipal Art Plan, SAC's public art program continues to manage educational and maintenance efforts. In October 2001, the public art program will host its third national conference "Public Art 101," which educates city staff, planners and citizens on how to develop public art in their own communities. The public art program will also expand its artist and community training efforts in cooperation with the SAC's arts resources division and the Department of Neighborhoods.

SAC's public art maintenance program has moved beyond deferred maintenance into regular scheduled maintenance of the City's extensive public art collection. During this biennium we will focus on relocating significant artwork that will be displaced by new buildings such as City Hall and Marion Oliver McCaw Performance Hall. We are also working with other City departments and community groups to clean, repair and monitor all permanently-sited artworks in the City's collection.

#### History of Public Art Program

In 1973, the Seattle Arts Commission's Public Art Program was established through a municipal ordinance which specified that 1% of City of Seattle capital improvement project funds be set aside for the commission, purchase, and installation of artworks. Since then, the City's public art collection has grown to include over 2,700 artworks in all media exhibited in City-owned buildings and outdoor locations throughout Seattle.

The Public Art Program has four methods for acquiring artwork: the direct purchase of new artwork in all media for the City's portable works collection; permanent artwork commissions for indoor and outdoor sites owned by the City; design team commissions for diverse locations such as police stations, community centers and city streets; and special projects, such as temporary artworks, artist-residencies and publications.

#### Municipal Art Plan Process

The 1% for Art Ordinance requires that one percent of City capital improvement program funds from all City departments be placed in the Municipal Art Fund for purchase and commission of artworks. The fund is managed by Seattle Arts Commission which prepares, adopts and amends a Municipal Art Plan (MAP) then submits it to the City Budget Office and the Mayor for approval. The Municipal Art Plan describes the status of continuing projects and establishes budgets for new projects. Funding sources for 1% for Art projects include public utilities (Seattle City Light, Seattle Public Utilities), bond issues (e.g. Seattle Center, Department of Parks and Recreation), general-funded capital improvement projects and special funds such as grants.

Prior to the adoption of the Municipal Art Plan, Public Art Program staff meets with representatives from each of the City departments allocating funds for art regarding the expenditure of these funds, departmental art priorities and the recommended placement of artwork at specific sites. These funding allocations and recommendations are presented to the Seattle Arts Commission, which works with staff to develop final recommendations for the Municipal Art Plan. Artwork projects are determined, in part, by their funding sources as they are sometimes restricted to a new construction site or influenced by specific departmental goals and objectives. However, money placed in the Municipal Art Fund may be combined into projects that include funding from several sources.

#### Seattle City Light

Artist Residency Program

Lyn McCracken

Photographer in Residence: Communications Division

In 2000, as a result of a call for Northwest photographers, the Seattle Arts Commission selected Lyn McCracken to portray Seattle City Light and its employees as the utility moves into the next century. McCracken will spend an intensive time period within the communications division exploring the utility and the challenges it faces in an era of power crisis and electricity deregulation. She will explore the use of non-traditional photographic forms including mass distributed print works, artist-produced book, a web page or billboards as a means of displaying the images she captures. The budget for this project may be supplemented in 2002.

Fund Source	LTD	2001	2002	Total
City Light % for	\$30,000			\$30,000
Art		-		
Total	\$30,000			\$30,000

#### Dan Corson

Artist-in-Residence: Environmental Division

In 1998, artist Dan Corson began a residency at Seattle City Light. His assignment was to forge a creative link between the utility and the communities it serves. Working in the utility's environmental division during the first phase of his residency, Corson created an arts master plan identifying a variety of artistic opportunities to explore and communicate the utility's work. His is broad ranging proposals included ideas for art integrated into facilities, services and environmental programs. During 2001 Corson will develop several artworks that grow from his plan:

- "Skagit Streaming," a video-streaming project that demonstrates the activities of salmon, bio-organisms and shoreline life at the aggregate ponds downstream from the Skagit Dam. Skagit Streaming is currently being broadcast on the worldwide web (www.skagitstreaming.net), projected on the west-facing side of the Bon Marché garage (see p.31) and displayed on a video monitor on the ground floor of the Seattle Municipal building;
- "Temple of Power" an entry gazebo at Newhalem Dam built from recycled electrical generation parts and illuminated by fiber optics; and
- Wave Rave," an environmental installation that creates light and mist projections on a sculptural installation beneath Route 99 on Western Avenue in Belltown; and

In addition, Corson will develop the framework for future projects:

- A funding strategy for a multi-media operative performance to be commissioned by the Seattle Arts Commission for Seattle City Light's Georgetown Steam Plant; and
- "Oculus Portals," two illuminated 40-foot entry pylons built from recycled turbines that will welcome visitors to the Boundary Dam in 2006.

The following budget represents Corson's artist fees, project implementation costs for his and McCracken's projects and SAC project management. In addition to funds provided through the % for Art, most of these projects receive substantial direct funding and technical support from Seattle City Light. In late 2001, SAC will issue a new, regional call for artists seeking a new artist-in-residence for Seattle City Light who will be posted in another division of the utility.

Activity	Fund Source	LTD	2001	2002	Total
Phase One:	City Light %	130,000	50,000	. 0	180,000
Residency fees and	for Art	ı		<i>'</i>	
project					
management			-		
Phase Two:			50,000	50,000	100,000
Implementation					
costs	į				
Phase Three: new				50,000	50,000
artist residency					1
Total			,		\$330,000

## Residency-Generated Projects Environmental Division

Other artists will develop the following projects, described in Corson's master plan:

#### Interbay Substation

Interbay

17th Avenue W and W Bertona Street

During 2001-221, Seattle City Light will fund a new electrical substation through a "design build" process. The Interbay Substation will provide power to support new biotechnology firms in this industrial area. An artist from the Seattle Arts Commission's public art roster will be selected to participate as member of the design build team.

Source	2001	2002	Total
City Light % for	50,000	. 0	50,000
Art			
Total	50,000	0	50;000

#### Union Substation Wall

Central Core

Western Avenue and Union St.

A large blank concrete wall looms over Western Avenue at the Union Substation in the Pike Place Market area. The Seattle Arts Commission will select a local artist to create a temporary artwork on this wall until new development is constructed over the substation.

Source	2001	2002	Total
City Light % for	20,000	0	20,000
Art	•		
Total.	20,000	0	20,000

#### Megawatt Clock

Civic Center

Fifth Avenue between Cherry and James Streets

An artist will be selected through an open, national call to create a Megawatt Clock at City Hall, a sculptural timepiece that will continuously display the correct time and the City's energy use.

Source	2001	2002	Total
City Light % for	. 0	75,000	75,000
Art			·
Total	. 0	75,000	75,000

## Seafair and Torchlight Parade Citywide

In 2002, the Seattle Arts Commission will select two artists or artist/teams to create temporary artwork performances/displays using recycled Seattle City Light parts and emphasizing an environmental theme. Performances will take place during the Seafair and Torchlight Parades.

Source	2001	2002	Total
City Light % for	0	30,000	30,000
Art			
Total	0	30,000	30,000

#### Ongoing Programs

Urban Collaborations: 1994
Lake Union and South Cascade
International District/Citywide Project

#### Project Description:

In 1994 the Seattle Arts Commission initiated Urban Collaborations, a program designed to promote artist-initiated collaborations with City departments, community groups, neighborhood organizations or local corporations. In 1995, after reviewing proposals developed by seven artists/artist teams, the Seattle Arts Commission selected awarded commissions to Seattle artists Elizabeth Conner and Gail Lee Dubrow.

Elizabeth Conner has worked with the Office of Neighborhood Planning, community groups and businesses in South Lake Union and Cascade to develop a series of "small monuments" commemorating places and events which are "important and beautiful" in Cascade and South Lake Union, two rapidly changing neighborhoods. These "monuments," a series of two and three-dimensional artworks that will be scattered throughout the neighborhoods, will be installed during 2001. Because of Conner's extensive work in South Lake Union, SAC extended Conner's contract, commissioning her to develop the public art component of the South Lake Union urban design plan, now complete.

Gail Lee Dubrow has worked with historians, community members and civic groups to create a book and traveling exhibition depicting significant Japanese-American historical sites in the Seattle-King County. In early 2002, University of Washington Press will publish the book, which has received additional funding from the Simpson Foundation.

New funds added to this project in 2001 enable staff to continue working with Conner and Dubrow to help raise additional funds and facilitate these two projects.

Fund Source	LTD	2001	2002	Total
City Light % for	200,000	\$10,000	0	\$10,000
Art		. •		
Total	200,000	0	0	210,000

#### ARTS UP

Various Locations To Be Determined

In 2000 SAC re-introduced the Urban Collaboration program as Arts Up, a program designed to encourage creative interaction between artists and neighborhood or community groups. As a result of a national call for artists in 2000, SAC created a pool of 38 artist-activists from all artistic disciplines who will be matched with community or

neighborhood groups to participate in an art-making process. During 2001, SAC will solicit and select community groups to collaborate with artists in the program.

Artists and community groups will be encourage to develop their projects along their own paths. SAC will provide both technical assistance and financial support to help achieve well-developed, high quality projects and plans. During the second phase of the project SAC will provide additional support for the future implementation of at least 5 projects, which may range in size from \$25,000 to \$100,000.

In 2000, in preparation for the ARTS UP, SAC initiated several pilot projects to stimulate community involvement in public art:

- A pilot Arts Up project with artist BJ Krivanek, selected through a national call for artists, to develop an art plan for Pioneer Square that complements its neighborhood plan. A pilot project arising from Krivanek's plan will be initiated in 2001, funded with Seattle Public Utilities % for Art funds (see page).
- Public Art Roadmap, a workbook and interactive computer page that will lead community and neighborhood groups through the technical and maintenance issues required to complete successful public art projects
- Neighborhood public art guide maps.

Fund Source	LTD	2001	2002	Total
City Light % for	250,0000	180,000	70,000	500,000
Art.	į į			
Earned Interest		120,000	130,000	250,000
Department of	20,000			20,000
Neighborhoods	_			•
Early				
Implementation				
Funds		-		
General		19,000	19,000	38,000
Funds/Admissio		· -		•
ns Tax				
	\$270,000	\$319,000	\$219,000	\$808,000

New Programs

Neighborhood Public Art Opportunity Fund To Be Determined

As part of its efforts to support public art in neighborhood settings, the Seattle Arts Commission is establishing a special fund to enhance efforts by community groups. This fund may be used for Phase Two implementation of Arts Up projects, it may supplement budgets for SAC neighborhood-based public art projects, or may support community-generated public art projects. Guidelines for the use of these funds will be developed in

2001 and advertised through the Seattle Arts Commission's newsletter and other publications.

Fund Source	2001	2002	Total
City Light % for	70,000	70,000	\$140,000
Art			
Total	70,000	70,000	\$140,000

#### Individual Artist Support

Citywide

The Public Art Program of the Seattle Arts Commission will support generative work by visual artists in all media, increasing funds distributed to individual artists through the Arts Resources Division. Seattle-based artists will be selected on the strength of their past work and commissioned to create new work for display in a public setting.

Fund Source	2001	2002	Total
City Light % for	0	25,000	\$25,000
Art			
Total	0	25,000	\$25,000

#### Ongoing Projects

#### Creston Nelson Substation

Rainier Beach

S. Bangor Street and 51st - 55th Ave. S

In 2000, the Seattle Arts Commission funded Ries Niemi and Merrily Tompkins to reconfigure and move artworks originally created for Creston Nelson substation to Seattle City Light's North Service Center. Niemi's artwork, "Light Bulb Bench", is now completed. Tompkins' Tesla's Head" will be installed in Spring 2001.

In 2001, new funds are being set aside to create new artist-designed seating to replace some of the works removed from Creston Nelson substation.

The Seattle Arts Commission will commission one of the original artists or select a new artist to create new site-specific seating at the original site.

Source	LTD	2001	2002	Total
City Light % for Art	\$38,000	20,000	0	58,000
Total	\$38,000	20,000	0	58,000

#### Wall of Death

University District
Burke-Gilman Trail/Roosevelt Bridge

In 1993, as a result of the Artwork Network program, British Columbia artist Mowry Baden and architect Colin Baden created an environmental sculpture entitled "Wall of Death," which straddles the Burke Gilman Trail. The artwork has attracted many skateboarders and the direction of their traffic conflicts with other traffic on the trail. During 1998, the Seattle Arts Commission amended the Municipal Art Plan to commission the artist team to redesign the artwork to minimize the conflicts between skateboarders, bicyclists and pedestrians. Some restoration to the artworks was competed in 1999 and 2000. Renovations to the slope alongside the artwork will be completed in 2001.

Fund Source	LTD	2001	2002	Total
City Light % for	13,500	0	0	13,500
Art				
Total	13,500	0	0	13,500

#### Boundary Dam Documentary Film

In 2000, the Seattle Arts Commission select Dick Alweis of Alweis films to create a documentary film about the Boundary Dam that will examine the history of dam, the people who built it and its impact on the surrounding community of Metaline Falls. The film will be completed in time for the re-certification of the dam in 2002. The documentary, originally proposed as 30 minutes, will be expanded to one hour if additional funds can be raised.

Fund Source	LTD	2001	2002	Total
City Light % for Art	90,000	0	0	90,000
Private Funds		\$50,000		\$50,000
Total		0	0	\$140,000

#### Union Station Triangle

Pioneer Square

Third Avenue S and S. Jackson Street

In 1997, an inter-governmental team initiated streetscape and infrastructure improvements in the King Street Station area. The design efforts were lead by OTAK Architects, Nakano Associates landscape architects and artist Bill Will. The Seattle Arts Commission participated in the design and artistic review phases of this project and will fund fabrication of Bill Will's seating sculptures at Union Station Triangle.

Fund Source	LTD	2001	2002	Total
City Light % for	15,000	0 .	0	15,000
Art				
Total	15,000	0	0	15,000

#### Second Avenue Extension

Belltown

Three locations on Second Avenue

In 1999, artist Kurt Kiefer expanded his Second Avenue Street Improvement project by adding three new gateway elements. In 2001, the original neon clocks will be replaced with larger, more reliable models.

Fund Source	LTD	2001	2002	Total
City Light % for	19,000	0	0	19,000
Art				
Total	19,000	0	0	19,000

#### New Portable Works Purchases

Seattle Collects: 2001/2002

Citywide

#### Project Description:

New artworks in a variety of media will be purchased for the City Light % for City Light Portable Works Collection through the Seattle Collects Program

This competition will be open to artists who live or work in Seattle. Calls for artists are issued annually each summer. The artist selection panel review artists' slides and qualifications then created a short-list of artists for studio visits. During spring, the panel conducts studio visits and purchases artworks for the City Light Portable Works Collection.

Fund Source	2001	2002	Total
City Light % for	110,000	140,000	250,000
Art	·		-
Total	110,000	140,000	250,000

Print Works: 2001/2002

Citywide

#### Project Description

New artworks in print media will be purchased in 2001 and 2002 through a national call for artists. The program includes the purchase of existing prints.

Fund Source	2001	2002	Total
City Light % for	40,000	40,000	80,000
Art.			•
Total	40,000	40,000	80,000

#### Northwest Masters Program

Citywide

The Seattle Arts Commission will review its existing collection and conduct a direct purchase process to address the gaps in its collection of Northwest master artists.

Fund Source	2001	2002	Total
City Light % for	0	50,000	50,000
Art			
Total	0	50,000	50,000

#### FLEETS AND FACILITIES DEPARTMENT

#### Ongoing Projects

Maple Leaf Artwork

Maple Leaf

Roosevelt Avenue NE and NE 80th Street.

In 2000, the Seattle Arts Commission and Maple Leaf community members selected three artists from the public art roster to develop proposals for artworks in the Maple Leaf Neighborhood: Ries Niemi, Linda Hawarth and Deborah Mersky. After a review of proposals, artist Linda Hawarth was selected to fabricate glass mosaic artworks on the fence of Maple Leaf Park. Community members hope to raise additional funds to implement the other project proposals.

Fund Source	LTD	2001	2002	Total
ESD % for Art	31,000	0	0	31,000
Total	31,000	0	0	31,000

Seattle Municipal Court and Police Precinct (Justice Center) Civic Center

Fifth Avenue between Cherry and James Streets

In 1998, Seattle artist Pam Beyette was selected as the lead artist for the Seattle Justice Center, which includes a courthouse, police facilities and a police memorial. Upon completion of the project scoping and design development phase, Beyette proposed an art plan which included opportunities for herself and other artists. Three other artists, Norie Sato, Michael Davis and Richard Turner, have worked with Beyette to develop a series of site-integrated artworks for the exterior spaces and lobbies of the courthouse and police buildings. In 2001, open calls for regional artists will be issued to select artists to create permanently-sited artworks for the elevator lobbies on the courts floors and jury assembly room.

Fund Source	LTD	2001	2002	Total
ESD % for Art	270,000	730,000	0	1,000,000
Total	270,000	730,000	. 0	1,000,000

#### Seattle City Hall

Civic Center

Fifth Avenue between Cherry and James Streets

In 1999, two artists were selected as a result of a national call seeking an arts planner for the Seattle City Hall and open spaces: Beliz Brother who has created an arts master plan based on a civic center residency, and James Carpenter was specifically commissioned to create a site-integrated glass work. Brother's arts master plan is now complete and includes opportunities for other artists as well as proposals for cultural activities in the building. In 2001, national calls for artists will be issued for specific commissions in the City Hall including an elevator sound work, a lobby light sculpture, an outdoor light projection, lobby sculpture. A lobby artwork wall will be commissioned through a nominated selection, as will smaller "Cultural Heritage" portable works (which may also draw on the existing collection). Brother herself will develop an "archive wall" artwork and Carpenter will complete his proposal for a glass bridge artwork in the main building lobby. 2002 allocations include \$50,000 for the purchase of NW masters artworks.

Fund Source	LTD	2001	2002	Total
ESD % for Art	75,000	900,000	75,000	\$150,000
SCL % for Art:	0		50,000	50,000
Megawatt Clock	1		75,000	75,000
Total	75,000	900,000	200,000	\$1,175,000

#### Southwest Precinct

Delridge

Delridge Avenue and S. Webster Street

In 1999, the Seattle Arts Commission used its public art roster to select artist Kay Kirkpatrick to develop site-integrated artworks at the new Southwest Police Precinct building. Kirkpatrick's proposals include artworks with environmental themes related to nearby Longfellow Creek and old growth forests integrated into the building's lobby, exterior and entry area. The Seattle Arts Commission has worked collaboratively with the Police Department, Executive Services and their design team to integrate art into this project. Construction is scheduled to begin in 2001.

Fund Source	LTD	2001	2002	Total
ESD % for Art	100,000	0	0	100,000
Total	100,000	0	0	100,000

#### New Projects

#### Ballard Municipal Center

Ballard

20<sup>th</sup> Avenue NW to 24<sup>th</sup> Avenue NW and from 56<sup>th</sup> Street NW to 58<sup>th</sup> Street

In early 2001, the Seattle Arts Commission will select an artist from its roster or the Seattle Public Library roster to develop an art plan for the Ballard Municipal Center Master. The artist/planner will develop an arts framework that creates a unified design approach and considers already established design criteria for major components in the Ballard Municipal Center master plan. The elements to be considered for this project are the new 15,000 square foot library that will be co-located with a 4,000 square foot Neighborhood Service Center, a new 1.8-acre park, and street and pedestrian amenities. A single artist may be selected to create the art plan and to act as lead artist for the library and service center design. The library design will be funded from SPL art funds and all work relating to overall art planning and design for other areas will be funded from percent for art funds.

Fund Source	LTD	2001	2002	Total
ESD % for Art	0	50,000	0	50,000
Total	0	50,000	0	50,000

## Lake City Neighborhood Center

Lake City

25th Avenue NE and NE 125th Street

In 2002, a new Lake City Neighborhood Services Center will be established within the new Lake City Library. The Seattle Arts Commission will add funds to the branch library budget, encouraging artist Linda Hawarth to expand the scope of her library art project to include involvement of a community-based artist.

Fund Source	LTD	2001	2002	Total
ESD % for Art	0	10,000	0	10,000
Total	0	10,000	0	10,000

Draft Municipal Art Plan: 2001-2002

City of Seattle

Park 90/5

Sodo

Airport Way S and Stacy Street

As part of the reorganization of its civic campus, the City of Seattle is moving a number of its operations to light industrial space in south downtown. The new site, adjacent to the I-90 and I-5 freeways, will include a landscaped campus. The Seattle Arts Commission will select an artist through an open regional call to create an artwork exploring the theme of sustainability for placement in the entry area of this complex.

Fund Source		LTD	2001	2002	Total
ESD % for Art	·	0	75,000	0	75,000
Total		0	75,000	0	75,000

#### DEPARTMENT OF PARKS AND RECREATION

#### Residency Program

Artist-in-Residence: Teen Programs

Citywide

A visual artist will be commissioned through an invited call for artists to work with teens in a community setting, and to develop and strengthen community partnerships between teens and the neighborhood through art. During the initial phases of this project, the artist will explore existing Parks Department's teen programs, meet with teens and teen workers, and develop a proposal for pilot programs to be offered at Parks sites. During the second phase, the artist will lead pilot projects with small groups of teens developing visual artworks that help build a relationship between teens and their communities. This residency is an opportunity for the Parks Department to explore programming that appeals to teens and strengthens their developmental assets, addresses their interests in visual arts, teaches them skills in the visual arts, and helps the Parks Department assess future arts options.

Fund Source	LTD	2001	2002	Total
DPR % for Art	20,000	10,000	0	30,000
Total	20000	10,000	0	30,000

#### Ongoing Project

#### West Seattle Cultural Trail

West Seattle Shoreline between Alki and Pier 107

Artists Donald Fels, Jaune Quick-to-See Smith and Joe Feddersen have completed a series of art elements which explore the social, archeological and ecological story of West Seattle's shoreline. The first phases, from Alki to Duwamish Head, were installed in 1997 and 1998 and consist of a series of paving insets, bronze plaques and viewing devices. A book, *Voices of the Community*, was published in 1998 as a guide to the artwork and the writings on the trail. In 1999, artist Donald Fels began conceptual design work on two sculptural elements for placement along the Duwamish Bike Trail, one at Terminal 107 and a second beneath the First Avenue Bridge. Construction has begun on the sculpture at Terminal 107 and it will be completed in summer of 2001. During 2001, the Seattle Arts Commission will support the further design development of the sculpture proposal for Phase Three.

There have been multiple funding sources for this project. In 1995, a Department of Natural Resources Aquatic Land Enhancement Act Grant was awarded to the Department of Neighborhoods and Seattle Arts Commission to supplement the budget for this project. The other funding includes % for Art funds from Shoreline Parks Improvement Funds, Parks and Recreation funds, Engineering Department Transportation Funds, and Seattle Public Utilities drainage and wastewater funds. The Port of Seattle has also supported this project with materials, construction funds, graphic design services and printing. This support, which is substantial, is not reflected in the table below which only included funding managed by the Seattle Arts Commission.

Fund Source	LTD	2001	2002	Total
SPIF % for Art	63,800	0	0	63,800
SPIF Construction Funds	1,500	0	0	1,500
SeaTran % for Art	50,000	0	0	50,000
SPU % for Art	50,000	50,000	0	100,000
ALEA Grant	80,000	0	0	80,000
Total	245,300	50,00	Ü	295,300

#### Future Programs

# Community Centers and Pro Parks Citywide

During 1999 and 2000 two major levies were passed to adding funding to the Parks system and facilities: the Community Centers Levy and Pro-Parks. Both of these programs are very ambitious and are in the earliest stages of development. During the

#### SEATTLE CENTER

Ongoing Projects

Neototems
Seattle Center
Second Ave. W. and Thomas St.

In 1992, SAC commissioned a team of four artists, Gloria Bornstein, Ned Kahn, Tim Siciliano and Horace Washington to work with Seattle Center planners to create an art plan for the Center. In 1995, a series of site-specific artworks was created as a result of these efforts. One of the elements was Gloria Bornstein's sculpture, "Neototems," two large bronze whales located on the west side of the International Fountain. The arts master plan called for a second phase of the Neototems — a whale tale that would emerge as a fountain on another part of Seattle Center grounds. In 2000, Bornstein began working with Seattle Center to create this sculpture and smaller sculptural elements for a children's garden north of the Pacific Science Center and adjacent to Seattle Children's Theater. It will be completed in 2001.

Fund Source	LTD	 2001	2002	Total
Seattle Center % for	139,500	 . 0	0	139,500
Art		 		
Total	139,500	0	0	139,500

#### Festival Pavilion

Seattle Center

Second Ave. W. and Harrison St.

In 2001, the old Flag Pavilion at Seattle Center will be demolished and work will begin on a new Festival Pavilion to replace the old structure. The building, designed by Miller Hull and Associates will include exterior mosaics and an interior patterned relief wall designed by artist Deborah Mersky. The artist was selected for this project from the Seattle Arts Commission's roster.

Fund Source	LTD	2001	2002	Total
Seattle Center % for	\$71,000	33,000	. 0	\$104,000
Art			,	
Total	\$71,000	33,000	0	\$104,000

#### Marion Oliver McCaw Hall

Seattle Center

Third Ave. W. and Mercer St.

During 1999/2000, with funding from the Community Center Levy, Seattle Center began a new stage of its redevelopment including renovations of the Opera House and Mercer Arena. During 2000, the Seattle Arts Commission selected the King County Public Arts Commission to develop an arts plan and manage artist selection for Marion Oliver McCaw Performance Hall. The arts plan outlined two major artwork commissions — a lighting commission in the lobby area and a site-integrated glass commission—, proposed opportunities for artwork donations, and identified locations for artworks currently situated in the Seattle Center Opera House. Artist Leni Schwendinger was awarded the commission for a light sculpture in the MOM Hall lobby as the result of an invited competition. In February 2001, artist Jun Kaneko was selected through a national call for artists to create a site-integrated glass element in the building.

Fund Source	LTD	2001	2002	Total
Seattle Center % for	25,000	125,000	475,000	\$625,000
Art				
Total	25,000	125,000	475,000	\$625,000

#### SEATTLE PUBLIC UTILITIES

#### Artist Residency Programs

During 1998, two artists, Lorna Jordan and Buster Simpson, were selected to create arts master plans for different aspects of SPU. Jordan outlined a large-scale vision for watershed development in her master plan entitled *Watershed Illuminations*, describing how integrating art into the utilities construction projects could reveal and explain the watershed to its users. Simpson's plan, *Poetic Utility* focused more on issues of drainage and wastewater, reuse of resources and sustainability, proposing ways artists could illustrate the system through raising public awareness. During 1999/2000, each of these artists will further developed ideas created in their master plan.

#### Buster Simpson

Artist in Resident: Water Resources Division

During his residency, now completed, Buster Simpson advised the Seattle Arts commission on the development of specific ideas outlined in his master plan entitled *Poetic Utility*. These include development of the Linden Avenue Swale project, a continuous drainage ditch along the Interurban Trail at North Linden Avenue;

involvement of artists in conservation demonstration projects at the Seattle Home Show and Torchlight Parade, and creation of "charettes du reality," which will involve artists and SPU project managers in the creation of new projects. The Linden Avenue Swale project was not realized. However, artists Kathryn Rathke and Curtis Taylor participated in the Seafair and Torchlight Parades respectively, and artists Janet Ziff and Joan Brigham created displays for the 2001 Home Show. The proposal for artist charettes will be adapted in 2001 and 2002 as part of the Urban Creeks implementation.

## Growing Vine Street

Belltown

Vine Street from Fourth Avenue to Elliott Bay

During Simpson's residency, he began working with a Belltown-based community-planning group to develop Vine Street as a pilot "Green Street". In 1998, the community hired a project team including Simpson, landscape architect Peggy Gaynor, and urban designer Don Carlson and Associates to develop a proposal, which would make Vine Street into a more park-like, pedestrian-friendly environment serving the community. In 1999/2000 the Seattle Arts Commission supported Simpson's design and installation of two prototype drainpipe/planters for this project, as well as an exhibition of project ideas at the Henry Art Gallery. During 2002, the Seattle Arts Commission is supporting the construction of a cistern planter that will be permanently installed. Simpson also created prototypes for two the project team will begin to implement the project, creating a runnel and a series of cisterns, planters and gardens along one section of the street. Simpson will participate in project development including design and construction of planter and cistern elements. This project has included support from SPU, SeaTran, SAC, Department of Neighborhoods, design professionals and community volunteers.

Fund Source	LTD	2001	2002	Total
SPU % for Art	40,000	40,000	. 0 .	80,000
Total	40,000	• 0	0	80,000

#### Residency-Generated Projects

## North Transfer Station ·

Fremont

N 34<sup>th</sup> Street

In 2001, Seattle Public Utilities will expand the North Transfer Station and develop landscape mitigation around its perimeter. In his residency, Buster Simpson recommended that the transfer station include an area where local artists could display works created with reclaimed materials. In 2001, an artist will be selected to work with SPU on a display area for community-generated artworks using recycled materials. The Seattle Arts Commission will work with the Fremont Arts Council to develop a management plan for the display area.

An open call for artists will be issued in 2001. This project will be open to artists residing in the Northwest (Washington, Oregon, Idaho, Montana, and British Columbia).

Fund Source	LTD	2001	2902	Total
SPU % for Art	20,000	30,000	0	50,000
Total	20,000	30,000	0	50,000

#### Lorna Jordan

Artist-in-Residence: Water Department

As a result of her residency, Lorna Jordan is creating two projects a limited edition book outlining her *Watershed Illuminations* concept for future development at Seattle Public Utilities, and a pilot project integrating art into the reclamation of Longfellow Creek at Yancy Street. Other artists are currently developing Smolt Slide and Lincoln Reservoir.

## Yancy Street/Longfellow Creek

Delridge

Yancy St. and 28th SW

#### Project Description

Seattle Public Utilities identified Longfellow Creek at Yancy Street as a Millennium creek restoration project. During 1999 and 2000 Jordan worked with SPU's project team to develop proposals for how art could be integrated into the reconstruction of the creek. The plan she devised is intended to "connect" people to the watershed through a series of outdoor "rooms" that accentuate environmental restoration and the creek's role in draining water to Puget Sound. These elements encourage visitors to discover the creek environment while protecting habitat and controlling creek side erosion. The artworks, integrated into habitat areas, include a Dragonfly-inspired sculptural pavilion and overlook, a fish-shaped bridge and a fern-shaped amphitheater. The bridge was installed in 2000. During 2001, Jordan will complete design work on the Dragonfly Pavilion and further develop the Fern Amphitheatre design. Construction will begin in spring, 2002.

Fund Source	LTD	2001	2002	Total
SPU % for Art	60,000	\$150,000	15,000	225,000
SPU Construction	\$110,000	460,000	. 0	560,000
Funds				
Total	170,000	610,000	15,000	\$785,000

#### Watershed Illuminations Book

Lorna Jordan will create a limited edition book entitled Watershed Illuminations. This book, which will be accompanied by exhibition quality drawings, will act as an inspiration and visual guide to future development of SPU watershed infrastructure. It will include chapters describing the overall design strategy for "illuminating" Seattle's Watershed, a close look at one creek, and proposals for further development of a specific creek project.

Fund Source		LTD	1999	2000	Total
SPU % for Art		0	40,000	· . 0	40,000
Total	 	. 0	40,000	ð	40,000

#### Residency-Generated Projects

#### Smolt Slide

Ballard

Hiram Chittendon Locks

The Smolt Slide, a salmon restoration project at Hiram Chittendon Locks, was identified as a priority project in the Watershed Illuminations report. Construction of the slide, which aids in the passage of juvenile salmon through the locks, is collaboration between King County, Seattle Public Utilities and the Army Corps of Engineers. SPU % for Art funds were used for to a project involving an artist in the design of the Smolt Slide. In 1999 artist Paul Sorey was selected from the Seattle Arts Commission's roster to create an artwork for the site. In 2001, Sorey will construct a sculptural installation resembling waves that contain LED lights that create flashing images of swimming salmon. King County Public Art Commission is managing this project.

Fund Source	LTD 199	9 2000 Total
SPU % for Art	35,000	0 0 35,000
Total	35,000	0 0 35,000

#### Lincoln Reservoir

Capitol Hill

E. Denny Way and Nagle Place

Another artist opportunity identified in the Watershed Illuminations residency was to involve an artist in the master plan for covering the Lincoln Reservoir. In 1998, San Francisco artist Douglas Hollis was selected to participate on the design team for this project. Hollis proposed a linear water feature above the site of the covered reservoir. The feature includes a sculptural water source element, flowing water and a reflecting pool. During 1999 and 2000, Hollis worked with the Berger Partnership landscape architects to develop the phased implementation of his proposal. The project, which was

delayed because of funding and uncertainty connected to the Sound Transit Light Rail alignment, is scheduled to begin construction in 2002.

Fund Source	LTD	2001	2002	Total
SPU % for Art	200,000	0	100,000	300,000
SPU Design Funds	6,000	0	0	6,0000
Total	206,900	0	100,000	306,000

#### Ongoing Projects

Meadowbrook Pond: Phase Two

Meadowbrook

35th Avenue NE and NE 110th Street

The Seattle Arts Commission has commissioned artist Lydia Aldredge to create an additional element for the Reflective Refuge at Meadowbrook Pond, a project completed in 1996. Aldredge will design and fabricate an artwork/kiosk for the display of information about the detention pond project. This kiosk will complement the artist-designed Water Bridge and Water Gate already on the site. Funds in this project also include money to create a pamphlet about the artworks on the site and support artisan fabrication of an additional bridge structure.

Fund Source	LTD	2001	2002	Total
SPU % for Art	.0	20,000	0.	20,000
SPU Construction	18,000	0	0	18,000
Funds, Phase One			"	
Carryover				
Total	18,000	20,000	0	38,000

## Salmon in the City (21st Century Salmon Project) Citywide

In 2001, the Seattle Arts Commission is sponsoring a series of temporary artists' installations to bring public attention to the issues of endangered Chinook salmon. The artworks will raise general awareness of Seattle's salmon, its urban creeks, and how people can protect salmon. The installations, created in variety of media and mounted in settings throughout Seattle include artworks by Rand Coburn; David Crow and John Foss; Dennis Cunningham, Natalie Fobes, Wendy Jackson Hall, Kevin Johnson, Christine Bauemler and Kelty McKinnon; Brad McCombs; Brad Miller; Ries Niemi; Lillian Pitt and Ken MacIntosh; James Pridgeon; Judith Roche; Judith Sparks; and Kim Stringfellow. The installations will be displayed publicly between Earth Day April 22, 2001 and July 31, 2001.

Seattle Arts Commission staff is working collaboratively on this project with the City of Seattle's "Salmon Team" including representatives from the Mayor's office, Seattle Public Utilities and Seattle City Light. Projects are being documented and displayed on Salmon Information TV.

Fund Source		LTD	2001	2002	Total
SPU % for Art		100,000	0	0	100,000
SCL % for Art		· 100,000	0	. 0	100,000
Total	• .	100,000	. 0	. 0	\$200,000

#### Queen Anne Tank

Queen Anne

First Avenue N. and Galer Street

Seattle Public Utilities will replace the two water tanks at the top of Queen Anne to increase water storage capacity and improve seismic safety. During 1999, artist Jon Gierlich was selected from SAC's design team roster will work with the tank's design team and community members to develop a proposal for the replacement tank. After unanticipated project delays, design resumes in 2001 with construction anticipated in 2002. Gierlich has influenced the massing and design of the water tank shapes and will be further develop their surface patterns and textures.

Fund Source	LTD	2001	2002	Total
SPU % for Art	50,000	25,000	30,000	\$100,000
Total	50,000	25,000	30,000	\$100,000

## Cedar River Watershed

North Bend

#### Project Description:

Seattle artist Dan Corson, working with architects Jones and Jones, has completed artwork proposals for the entry pavilion and outdoor courtyard at Cedar River Watershed's planned interpretive center. The entry pavilion includes suspended tree roots harvested in the area illuminated by blown-glass blue-green argon light tubes. Directly below, the artist has designed a pattern to be sandblasted into the floor. In the outdoor courtyard, the artist has located a series of "rain drums" in a grove of Vine Maple trees. Construction on this project has begun and the Visitor's Center is scheduled to be completed in fall, 2001.

Fund Source	LTD	2001	2002	Total
SPU % for Art	106,350	0	. 0	106,350
Total	106,350	0	ő	106,350

## Hatchcover (Utility Elements) Citywide

In 2000 the Seattle Arts Commission selected proposals by artists Betsy Best-Spadaro. Barbara Earl Thomas and Nancy Blum for new hatchcovers that will be used by Seattle Public Utilities and Seattle City Light. As part of their commission awards, each of these artists developed related classroom presentations and activities with Cleveland High art students in Seattle.

Fund Source	LTD	2001	2002	Total
SPU % for Art	20,000	20,000	0	40,000
City Light % for Art	20,000		0	20,000
Total	40,000	20,000	0	60,000

#### New Projects

#### Urban Creeks - A Revelation

The Seattle Arts Commission and Seattle Public Utilities will involve four different artist teams to work with community volunteers in helping "reveal" where urban creeks are located in the four corners of the City including Thornton Creek, Southeast creeks, Northwest creeks and then Southwest creeks. Revelations could include a variety of artistic ideas including interpretive artworks, signage, permanently sited artworks. earthworks and printed material. Funds will be distributed over a several year period and will include design and fabrication costs.

Fund Source	•	LTD	2001	2002		Total
SPU % for Art	-	. 0.	 50,000	50,000		100,000
Total		0	50,000	50,000	٠.	100,000

## Pioneer Square Project

Pioneer Square

Site TBD

IN 2001, Seattle Public Utilities is completing substantial infrastructure improvements in Pioneer Square: \$1.5 million sewer rehab project in the alleys, and extensive work with the community to clean up dumpster and graffiti problems in the alleys. As an adjunct to these efforts, funding from Seattle Public Utilities % for Art money will support the implementation of a pilot project identified in BJ Krivanek's Pioneer Square Arts and Legends plan.

Fund Source	LTD		2001		2002	·	Total
SPU % for Art	0	3(	,000	7.5	0		\$30,000
Total	. 0	, 30	,000		0		30,000

Beer Shiva Park: Salmon Friendly Demonstration

Southeast Seattle Mapes Creek

In 2000, Seattle Public Utilities conducted a series of design charettes exploring the creation of "salmon friendly" shorelines. The charettes teams included landscape architects, civil engineers, architects and artists. In 2001, Seattle Public Utilities will initiate a multi-year demonstration project at Mapes Creek, which begins in Beer Shiva Park in Southeast Seattle. The Seattle Arts Commission will select an artist from its ARTS UP roster or through a Northwest call for artists to participate on this team.

Fund Source		LTD	 2001	 2002	Total
SPU % for Art	-	0	 30,000	30,000	60,000
Total		0	30,000	30,000	60,000

Textile Purchase: 2001-2002

Citywide

In 2001 and 2002, the Seattle Arts Commission will add to Seattle Public Utilities Portable Works Collection by purchasing textile works. In 2001, new works created in created in traditional cultural forms will be purchased. In 2002, contemporary textiles will be purchased.

In 2001, selection will be made by direct purchase, using experts in traditional ethnic textiles to seek and recommend purchases. In 2002, the Seattle Arts Commission will issue call for artists open to artists residing in the Northwest.

Fund Source	LTD	2001	2002	Total
SPU % for Art	0	40000	. 40000	80,000
Total	0	4,000	40,000	80,000

## Operations Center Artwork Wall

Sodo

S. Lander Street and Airport Way S

The Seattle Public Utilities Operations Center is the headquarters for field workers and all Water Division operations. There is a courtyard that serves many of the building's workers that is dominated by a large gray and concrete wall. In 2002, the Seattle Arts Commission will select a Seattle artist from the roster to develop a permanently-installed artwork for space.

Fund Source	LTD	2001	2002	Total
SPU % for Art	0	. 0	30,000	30,000
Total	0	0	30,000	30,000

#### SEATTLE TRANSPORTATION DEPARTMENT

#### Artist Residency

#### Artist in Residence

Following the success of its artist residency programs in other City departments, the Seattle Arts Commission will seek an artist to be "in residence" at Seattle Transportation Department. Improvements to Seattle's transportations are a Mayoral priority and Seattle Transportation Department is developing a variety of projects and strategies that will ease transportation movement within Seattle.

In 2002, the Seattle Arts Commission will select a local artist from its roster to be "in residence" in the design division of Seattle Transportation Department. The artist will spend an initial time period learning about the department, its plans and its projects, and will develop an arts plan identifying opportunities for artist to enhance the department's work. Following the initial period, the artist-in-residence will develop a pilot project or projects.

Fund Source	4,	LTD		2001		2002		Total
Seatran % for Art		0		. 0		40,000		40,000
Total		0	-	, 0	٠.	40,000	• ;	40,000

#### Ongoing Projects

#### Pine Street Improvements

Downtown :

Pine Street between 3rd and 5th Avenues

In 1996 artist team Robert Maki and Rod Clark worked with Seattle Engineering Department staff to develop a plan for artistic enhancements at the Pine Street corridor. This plan recommended the creation of a light-based artwork to enliven the northeast corner of Second Avenue and Pine. Last year, Seattle City Light artist in-residence Dan Corson developed an idea that will animate and illuminate this location by placing a large-format video projection on the West-facing wall of the Bon Marché garage. Corson proposed a nighttime video projection, "Skagit Streaming" showing continuously changing unedited images of salmon activity as observed from the aggregate ponds downstream from the Skagit Dam. This video artwork records and projects activities from three viewpoints - the salmon's, the eagle's and the underwater microorganism's. Situating it at Second Avenue and Pine will place it within view of Elliott Bay in a lively downtown area where visitors and residents can enjoy it.

The Pine Street Corridor Project is funded through a HUD grant, supplemented by City Light % for Art and privately raised funds.

Fund Source	LTD	2001	2002	Total
Seatran % for Art and	151,000	0	0	151,000
HUD funds				
City Light % for Art	25,000	. 0	0	25,000
Private Funds	22,500	27,500	. 0	50,000
Total	226,000	27,500	0	226,000

#### West Lake Union Pathway

South Lake Union

Westlake Avenue N from Blaine Street to McGraw Street

Artist Maggie Smith, selected for this commission using the Seattle Arts Commission's pre-qualified artist roster, has developed a proposal for site-integrated art at the West Lake Union pathway with an emphasis on overlook areas at street-ends where Seattle Public Utilities is developing new wastewater outfalls. Smith's artwork includes paving enhancements, seating elements, decorative fences and handrails. It features visual imagery and text highlighting the history, industrial and recreational uses of Lake Union. Construction of this project, delayed because of Endangered Species Act review, is scheduled to commence in late 2001.

Fund Source	LTD	2001	2002	Total
SeaTran % for Art	20,000	0	0	20,000
SPU % for Art	20,000	- 0	. 0	20,000
City Light % for Art	20,000	0.	0	20,000
Total	20,000	0	0	60,000

#### **Ballard Gateway**

Ballard .

15th Avenue NW and Leary Way NW

In 2000, the Seattle Arts Commission selected artists Tom and Lea Anne Askman to create proposals for a gateway to Ballard on 15<sup>th</sup> Avenue. This gateway project will be located on the north side of the Ballard Bridge and reflect the unique characteristics of the Ballard community. Construction will begin in 2002.

Fund Source	LTD	2001	2002	Total
SeaTran % for Art	25,000	20,000	0	45,000
Millennium Light Fund		18,000	0	18,000
Total	0	38,000	0 !	63,000.

Galer Street Overpass

Lower Queen Anne/Magnolia 15th Avenue W and W Galer Street.

In 1998, artist Vicki Scuri was selected from the Seattle Arts Commission's design team roster to assist Seattle Transportation Department in the design of the Galer Street overpass. Located adjacent to the Lake Washington Ship Canal and the new Immunex Corporation headquarters, the artwork takes its inspiration from maritime and biotechnical images. Scuri has designed sail-like sculptural light-pole attachments that will be mounted on the overpass and a concrete wall relief pattern that evokes the DNA spiral, water and nautical ropes. The project is currently under construction.

Fund Source	LTD	2001	2002	Total
SeaTran % for Art	30,000	0	0	30,000
SeaTran Construction	50,000			50,000
Funds			- ' -	
City Light % for Art	50,000	50,000	0-	100,000
Total *	Ð	50,000	. 0	180,000

#### Beacon V

Beacon Hill

Beacon Avenue between Spokane and Alaska Streets

In 1999, artist Clark Wiegman was selected from the Seattle Arts Commission's public art roster to develop proposals for artistic enhancements for the median improvements along Beacon Avenue bisecting Jefferson Park between Spokane and Alaska Streets. Wiegman completed two projects, a pair of illuminated sculptures at Spokane and Alaska, a plinth and a pylon. He also collaborated with artist Glenn Herlihy who created three cast concrete planters near the northwest corner of Beacon and Spokane.

In 2001, Wiegman proposes working with artist Saya Moriyasu to design artistic enhancements to the 1940s trolley structure at Beacon and Spokane. This phase of the project will be jointly funded by Metropolitan King County and funds raised through neighborhood efforts.

Fund Source	LTD	2001	2002	Total
SeaTran % for Art	26,000	8,000	· 0	34,000
Seatran Construction	15,500	0	. 0	15,500
Funds				
City Light % for Art	10,000	. 0	0	10,000
Total	51,500	8,000	. 0	59,500

#### The Ave

University District

University Way between Campus Parkway NE and NE 50th Street

In 2000, artist Brian Goggin was selected to work with the community and an urban design team from Makers to create artistic enhancements to "The Ave," University Way in between Campus Parkway and 50<sup>th</sup> Street. Goggin has developed proposals for gateway treatment at the Farmers' Market site on 50<sup>th</sup> and for paving and sculptural elements along the length of the street improvements. Fabrication and installation of the Farmers Market gateway is planned to begin in 2001, with other elements to follow later.

Fund Source	LTD	2001	2002	Total
SeaTran % for Art	25,000	30,000	0	55,000
Total	. 0	30,000	. 0	55,000

#### New Projects

#### South Lake Union Gateway

South Lake Union

Fairview Avenue and Mercer Street

The South Lake Union Neighborhood Plan identified as a high priority creation of a gateway to the community from the Mercer St. exit of the I-5 Freeway. During 2002, the Seattle Arts Commission will work with the community to commission an artist through an open call to create a gateway to South Lake Union.

Fund Source	LTD	2001	2002	Total
SeaTran % for Art	0	0	30,000	30,000
Total	0	0	30,000	30,000

#### Potlatch Trail

South Lake Union, Uptown, Belltown

In 2001, the City is launching a major initiative to create the Potlatch Trail, a pedestrian and bicycle path that will connect South Lake Union Park, Seattle Center, Olympic Sculpture Park, Myrtle Edwards Park and Elliott Bay. The trail will include artistic enhancements that reinforce the cultural and industrial history of this area.

During the first phase of this project, the Seattle Arts Commission has assembled a team of artists whose recent work is situated along the trail route: Gloria Bornstein, Maggie Smith and Elizabeth Conner. These artists have developed an arts element for the conceptual plan that will serve as a guide to commission other artists and artisans to

create artworks for the trail. The Seattle Arts Commission will involve Native American artists and cultural historians in developing the project.

Fund Source	٠.	LTD	2001	2002	Total
SeaTran % for Art	•	0	 20,000	10,000	30,000
Total		0	 20,000	10,000	30,000

#### Lake City Multi-Modal

Lake City

Lake City Way, 105th to 145th

In 2001, the Seattle Transportation Department will be working representatives from King County and Washington State to create improvements to Lake City Way between the I-5 Freeway and 145<sup>th</sup> Street. During 2002, an artist will be commissioned to work with the transportation planners, design team and community members to develop an artwork proposal to enhance this improved traffic corridor.

Fund Source	LTD	2001	2002	Total
SeaTran % for Art	. 0	: 0	30,000	30,000
Total	. 0	0	30,000	30,000

#### OTHER PROJECTS

#### Cultural Conference

#### **Project Description**

In 2001 the Seattle Arts Commission will co-sponsor a conference exploring issues of authenticity and cultural appropriation in Native American art. The event will coincide with the Salmon Homecoming Forum in September, 2001.

Fund Source	LTD	2001	-	2002	Total
General Fund % for	10,000	0	·	0	10,000
Art					
Total	10,000	0	,	0	10,000

## Mayoral Medal

#### Project Description

In 2000, the Seattle Arts Commission, as the result of an invited competition, selected artist Lezlie Jane to create a City of Seattle Distinguished Citizen medal that will be awarded to visiting dignitaries by the Mayor and City Council. The medal is double-sided, cast in bronze, and three inches in diameter. One side of the medal depicts the artist's concept of the City of Seattle, containing images of the city, its environs, and

other qualities that make Seattle unique. The second side of the medal depicts a reinterpretation of the City Seal, created in 1937 by artist James Wehn. \$10,000 was advanced to this project from City Light % for Art in 2000.

Fund Source	LTD	2001	2002	Total
SCL % for Art	10,000	5,000	. 0	15000
Private Funds		\$10,500		10,50
Total	10,000	10,000	0	25,500

## Public Art Education Projects

In 2001 and 2002, the Public Art program will undertake several of educational projects. These will include:

- Creation of two to four new neighborhood-focused public art guide maps,
- Co-sponsorship of a Seattle Sesquicentennial exhibition;
- Public art workshops; and
- Public Art 101, a national conference on the fundamentals of public art practice.

All of these projects will receive revenue from additional sources. SAC's funds will support the involvement of artists and SAC staff in developing these projects.

Fund Source	LTD	2001	2002	Total
Earned Interest	0	30,000	30,0000	60,000
Total	. 0	30,000	30,0000	60,000

#### Public Art Maintenance

Public art, although created through the Municipal Art Fund is maintained through two sources: General Fund and Cumulative Reserve Fund. The Seattle Arts Commission inspects its artworks annually and maintains a database tracking their condition and care. The Commission plans annually for scheduled and routine artwork maintenance.

In 2001 and 2002, emphasis will be placed on the relocation of major artworks and portable works as a result of the new Civic Center development and renovation of the Seattle Opera House into Marion Oliver McCaw Performance Hall. On-going routine and scheduled maintenance of the permanent collection, as well as repair, re-matting and reframing of portable works are planned. Several significant works at the Opera House and Daybreak Star Cultural Center will be restored.

## Financial Summary

The Seattle Arts Commission is required to track public art revenue by departmental fund source the year it is received, and to expend funds within a certain time period. The following financial summary lists active projects and their remaining balances as of May 2001. It also shows the allocation of funds for amendments and new projects. Projects funded through multiple sources are listed within each departmental fund source.

There is an unprogrammed balance in the Municipal Art Fund, which can be attributed to individual departments. These funds, as well as new monies allocated to the Municipal Art Fund during 2001 and 2002, form the financial basis for new projects and amendments to ongoing projects.

#### Summary of Percent for Art

: <b>S</b>	eattle City Light	Fleets and Facilities Department	Seattle Center	Seattle Public Utilities	Department of Parks and Recreation	SeaTran	Intere Earning
Carryover to 2001	360,120	267,568	14,283	239,182	11,605	10,000	229,92
2001 % for Art	571,700	1,744,700	202,770	806,000	91,270.	103,900	130,00
Subtotal	931,820	2,012,268	217,053	1,045,182	102,875	113,900	359,92
2001 Allocations & Overhead	711,111	1,887,129	172,194	962,268	16,389	90,437	159,10
Carryover to 2002	220,709	125,139	44,859	82,914	86,486	23,463	200,82
Proj. 2002 % for Art	551,254	11,560	587,665	310,123	115,880	113,403	130,00
· Subtotal	771,963	136,699	632,524	393,037	202,366	136,866	330,82
2002 Allocations & Overhead	688,588	75,809	516,137	316,709	8,112	117,938	169,10
Carryover to 2003	83,376	60,890	116,388	76,329	194,255	18,928	161,72

NOTE: SPU 2001 % Includes \$460,000 in construction funds

## Seattle City Light: Ongoing Projects

Projects	Budget	LTD	Encumbra	Balance	2001	2002	Revised
			псе		Proposed	Proposed	Budget
Artist-in-Residence	130000	120053		. 9947 <sup>2</sup>	. 50000	. 0	180000
Creston-Nelson Artwork	. 63000	37250	. 7989			-	. 83000
Moves	· · ·		• •			•	
Wall of Death	13500	5495		8005		•	. 13500
Boundary Dam Film	90000	14987	. 68400	6613			140000
Nelghborhood	270000	91863	· 12128	166008	180000	70000	808000
Collaboration/Arts Up <sup>2</sup>							
Second Ave Extension	19000	9777	٠.	9223			19000
SCL Photographer in	30000	5540	· · · ·	24460		•	30000
Residence	-					•	
Galer St. Overpass 3	50000				- 50000		180000
Urban Collaborations	200000	138328.1	61250	422	10000		210000
Mayoral Medal *	10000	. 9625	•	375	5000	• •	25,500
Union Station Triangle	15000	1557		13443			15000
Hatchcovers 5	20000	-		•			60000
Salmon in the City	100000						200000
Total City Light	1010500		•	• .	31500	70000	1,964,000

- NOTES:
  1. Boundary Dam: \$90,000 SCL, \$50,000 Private Fundraising Goal
- Neighborhood Collaborations: \$500,000 SCL \$38,000 Admissions Tax, \$20,000 DON Early Implementation Funds, \$250,000 earned interest
- 3. Galer Street \$100,000 SCL \$30,000 SeaTran \$50,000 Construction
- 4. Mayoral Medal includes: \$10,500 in private funds
- 5. Hatchcovers \$20,000 SCL, \$40000 SPU
- 6. Salmon in the City \$100,000 SCL,\$100,000 SPU \$100,000

#### Seattle City Light: New Projects

Project Name	Proposed 2001 Pro	posed 2002 Revis	sed Budget
2002 New Artist in Residence		50000	50000
Artist Residency Implementation	50000	50000	100000
Union St. Substation wall	20000		20000
Torchlight/Seafair		30000	30000
Interbay Substation	50000		50000
Seattle Collects	110000	140000	250000
Print Works	40000	40000	80000
Neighborhood Art Opportunity Fund	70,000	70,000	70,000
Civic Center	0	75,000	0
Megawatt Clock (City Hall element)	· 1	50,000	75000
Individual Artists		25000	. 25000
NW Masters Purchase		50,000	0
Subtotal New Projects	340000	580000	920000
Subtotal Ongoing Projects	315000	70000	385000
Overhead (at 7% new % for Art)	56,1101	38588	94698
Total Allocations, amendments and overhe	ad 711,111	688,588	1399698

## Fleets and Facilities Department: Ongoing Projects

Projects	Budget	LTD	Encumbra nce	Balance	2001 Proposed	2002 Proposed	Revised Budget
Maple Leaf Neighb. Art Seattle Municipal Courthouse Seattle Civic Center Southwest Police Precinct TOTAL ESD	3100 27000 7500 10000 47600	133203 38669 23722	3 23943 37500	112854 96	730000 900,000	75,000	100000

#### Fleets and Facilities Department: New Projects

		Proposed 2001	Proposed 2002	Revised Budget
Park 90/5		75000		75000
Ballard Civic Center		50000		35000
Lake City Civic Center		10000		10000
Subtotal New Projects		135000	<u>-</u>	135000
Subtotal Ongoing Projects	,	1630000	75000	1705000
Overhead (at 7% new % for Art)		122129	809	122938
Total Allocations, amendments	and overh	ead 1887129	32582	5 1962938

#### Department of Parks and Recreation: Ongoing Projects

#### Department of Parks and Recreation

							-	
West Seattle Cultural Trail <sup>1</sup>	65300	214360	36740	-185800		.*		295300
Parks Department AIR	20000	2314	•	17687	10000	٠.	•	30000
Gasworks	40000	3835		36165	٠,			40000
TOTAL DPR	. 125300	_			10000		0	365300

#### Department of Parks and Recreation: New Projects

Project	Proposed 2001	Proposed 2002 Revised Budge		
Community Centers	TBD	TBD		
. Pro Parks	TBD	TBD ·		
Aquarlum Masterplan		TBD		
Subtotal New Projects		0		
Subtotal Ongoing Projects	1000	0 - 0		
Overhead (at 7% new % for Art)	6388.	.9 _ 8111.	6 14500.5	
Total Allocations, amendments and overhea	ad .	TBD		

NOTE:
1. West Seattle Cultural Trail SPIF \$63,800, SPIF construction \$1500, SeaTran \$50,000, \$SPU 100,000, ALEA \$80,000

# Seattle Center: Ongoing Projects

Projects	-	·. · ·	Budget	LTD	Encumbr anca	Balance	2001 Propose d	2002 Propose d	Revised Budget
Marion Ollver Neolotems Festival Pavili TOTAL SC		w Hall	25000 139500 71000 235500	23631 69225 11910	15000 22500 15300	-13631 47775 2790	125000 33000 158000	475000 475000	135900 79000

## Seattle Center: New Projects

Project	Proposed 2001	Proposed 2002	Revised Budget
Subtotal New Projects			
Subtotal Ongoing Projects	158000	475000	. 633000
Overhead (at 7% new % for Art)	14193.9	41136.55	55330.45
Total Allocations, amendments and overhe	ad	516136.55	688330,45

## Seattle Transportation Department: Ongoing Projects

Projects Budg	et. LTD	Encumbr ance	Balance	 2002 Proposed	Revised Budget
Pine Street Improvements <sup>1</sup> 151 Galer Street Overpass <sup>2</sup> 80 Ballard Gateway <sup>3</sup> 25	500 52699 1000 185006 0000 38419 5000 10362 5000 8567	5000 7541	-11199 15156 36581 2097 6435		59500 226000 180000 63000 55000 583500

#### NOTES

- Pine Street Improvements \$151,000 Seatran/HUD money; \$25,000 SCL % for Art; \$50,000 private funds
- 2. Galer Street Overpass \$30,000 SeaTran, \$50,000 Construction, \$100,000 SCL
- 3. Ballard Galeway In 2001, \$18,000 will come from Millennium Light funds

#### Seattle Transportation Department: New Projects

Project	Proposed 2	2001 F	roposed 2002	Revised Budget
Artist in Residence	••	0	40000	40000
Lake City Multi-modal			30000	30000
SLU/Potlatch Trail		20000	10000	30000
SLU Gateway			30000	30000
Subtotal New Projects		20000	110000	130000
Subtotal Ongoing Projects		58000	0	58000
Overhead (at 7% new % for Art)		12436.9	7938,21.	/ 20375.11
Total Allocations, amendments and o	verhead		117938.21	-208375.11

#### Interest Earnings: Ongoing Projects

Projects	Budget LTD	Encumbr Balanca * ance	 2002 Revised Proposed Budget
Cultural Conference TOTAL	10000	978 9023	 10000 10000

#### Interest Earnings: New Projects

Project	Proposed 2001 Proposed Revised Budget 2002
Public Art Education Project	30000 30000 60000
Neighborhood Collaborations/Arts Up	120000 130000 250000.
Subtotal New Projects	150000 160000 310000
Subtotal Ongoing Projects	0 00
Overhead (at 7% new % for Art)	9100 9100 18200
Total Other	159100 169100. 328200

#### Seattle Public Utilities: Ongoing Projects

Projects .	Budget	LTD En	cumbra ncs	Balance	Proposed 2001	Proposed 2002	Revised Budget
Cedar River Watershed Lincoln Reservoir Smolt Silde Growing Vine Street West Lake Union <sup>1</sup> Salmon in the City <sup>2</sup> Longfellow St.: Yancy St <sup>-3</sup> Queen Anne Tank Utility Elements- Hatchcovers <sup>4</sup>	106350 206000 35000 40000 60000 100000 160000 50000 40000	54292 84218 28444 34899 14959 49568 14513 20068	19714 18227 35000 2500 7400	31611 103555 6555 5101 10039 147931 28086 39931	40000 610000 20000	100000 15000 30000	106350 306000 35000 80000 60000 200000 785000 100000 60000
Watershed Illuminations North Transfer Station West Seattle Cultural Trail 5 Total SPU	40000 20000 50000 907350	3912 3115		36088 16885	30000 50000 <b>75000</b> 0	145000	40000 50000 50000

#### NOTES

- 1. West Lake Union \$20,000 SCI, \$20,000 SPU, \$20,000 SeaTran
- 2. Salmon in the City \$100,000 SCL,\$100,000 SPU
- 3. Yancy Street \$225,000 SPU % for Art, \$610,000 SPU construction funds
- 4. Hatchcovers \$20,000 SCL, \$40000 SPU
- 5. West Seattle Cultural Trail SPIF \$63,800, SPIF construction \$1500, SeaTran \$50,000, \$SPU 100,000, ALEA \$80,000

## Seattle Public Utilities: New Projects

Project		Proposed 2001	Proposed 2002	Revised Budget
Portable Works Textile Purchase		40000	40000	80000
Beer Shiva Park		30000	30000	
Urban Creeks		50000	50000	100000
Meadowbrook Klosk and Bridge		38000		38000
Pioneer Square Alleys		30000		30000
OCC Wall			30000	30000
Subtotal New Projects		188000	150000	353000
Subtotal Ongoing Projects		750000	145000	895000
Overhead (at 7% new % for Art)		24267	21709	45976.
Total Allocations, amendments	and overhead		316709	1293976

# APPENDIX H

HOME WHAT'S NEW SEARCH CONTACT US

WHO WE ARE

WHAT WE DO

FUNDING APPLICATIONS

WORKSHOPS & FORUMS

NEWS

**PUBLICATIONS** 

SHOWCASE

CITY SPACE

**KEY TOWER GALLERY** 

**VIRTUAL GALLERY** 

SEATTLE CINE-VISIONS

THE PEEPHOLE SERIES

**ELECTRIC GALLERY** 

**SHOWCASE** 

**ELECTRIC GALLERY** 

Union Substation Wall Western Avenue and Union St

Through June 2004

The Mechanics of Flowering

Richard Hutter

"My artwork is a montage of images based on paintings and printmaking source materials from my studio practice. Panels of randomly patterned, geometric flower forms alternate with images of gears. The gears do double-duty as stand-ins for flowers, and also reference the 'machine age.' It was my intention to introduce something green into the area, but also to create a latitudinal rhythm or motion that honors the movements along Western Avenue." · Richard Hutter

Hutter is a Seattle-based painter and printmaker. Since 1993 he has been using found materials, draftsman drawing tools and acrylic paint to create abstract artworks that reference the floral still life and landscape traditions in a "geometric" style. Richard's paintings were photographed by The Slide Company for this large-scale exhibit. In Seattle his artwork is represented by the Lisa Harris Gallery and also available at the Seattle Art Museum Rental/Sales Gallery. More work can be viewed at www.richardhutter.com.

The Electric Gallery is an outdoor rotating exhibition space for artists in Seattle, located on the western face of the Union Substation, at Union Street and Western Avenue.

The total size of the image space is 14 feet high and 100 feet long. Proposed by Dan Corson, Seattle City Light's first Artist-in-Residence, this display space allows artists to replicate traditionally small-scale, two- and three-dimensional work at a scale not normally possible. Seattle City Light 1% for Art funds support this large-scale exhibition space.



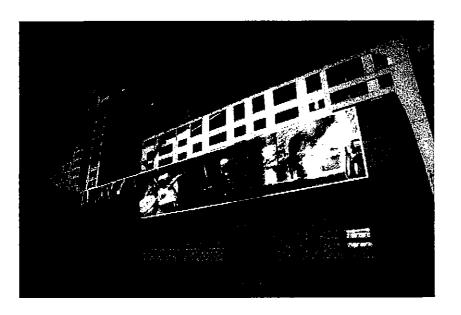
The Mechanics of Flowering by Richard Hutter, 2004.

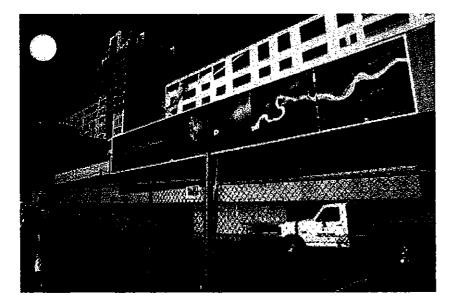
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City of Seattle



Public Artworks - Electric Gallery

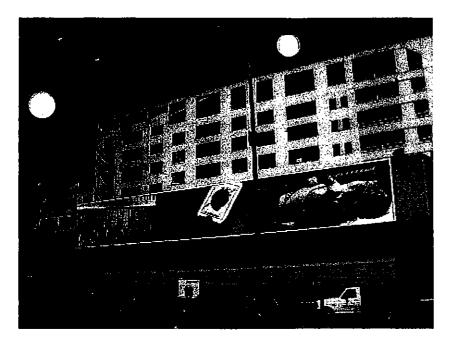




WITHIN DISEASE AND HEALTH at the Electric Gallery ( a Seattle City Light Substation) CONDUCT 3 Large scale temporary artworks on the side of a electrical substation. The project is a series of 3 triptychs comparing the human and electrical circulatory systems in disease and health. Each 15'h x 100' long triptych was up for 4 months then will all be shown together at a yet undetermined location. This project created in collaboration with Lyn McCracken

**FLOW** 

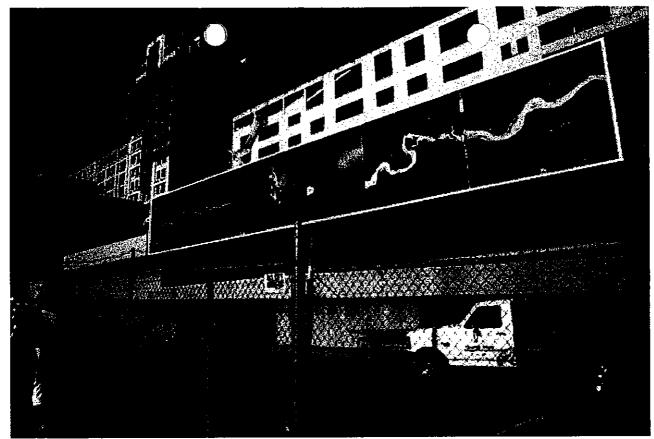
**SPARK** 



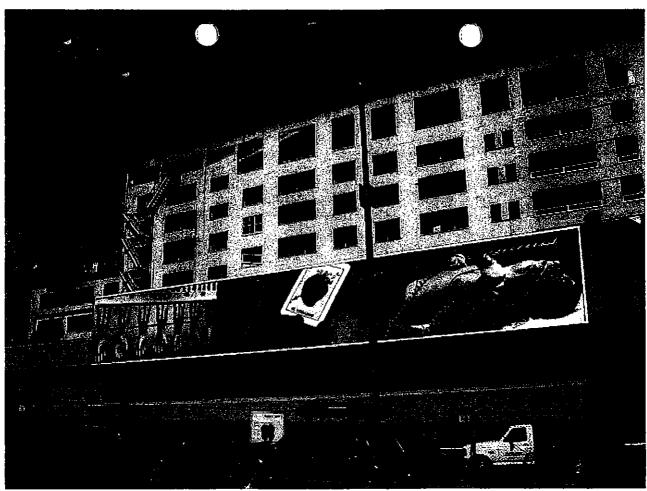
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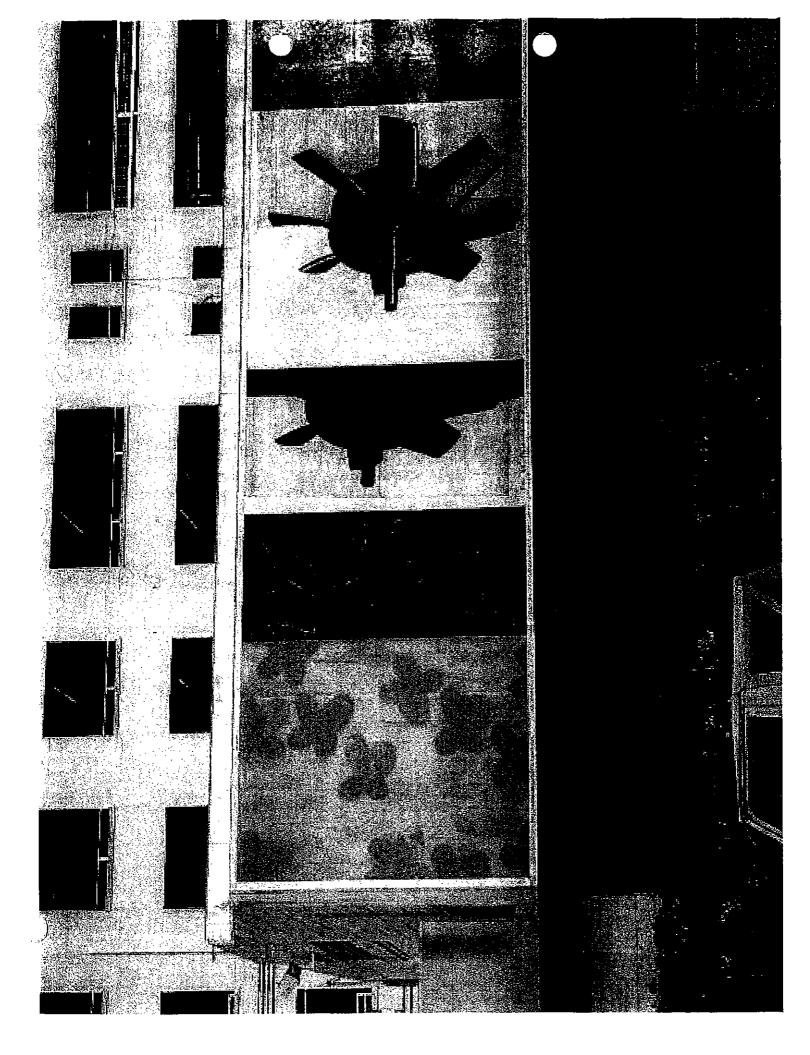
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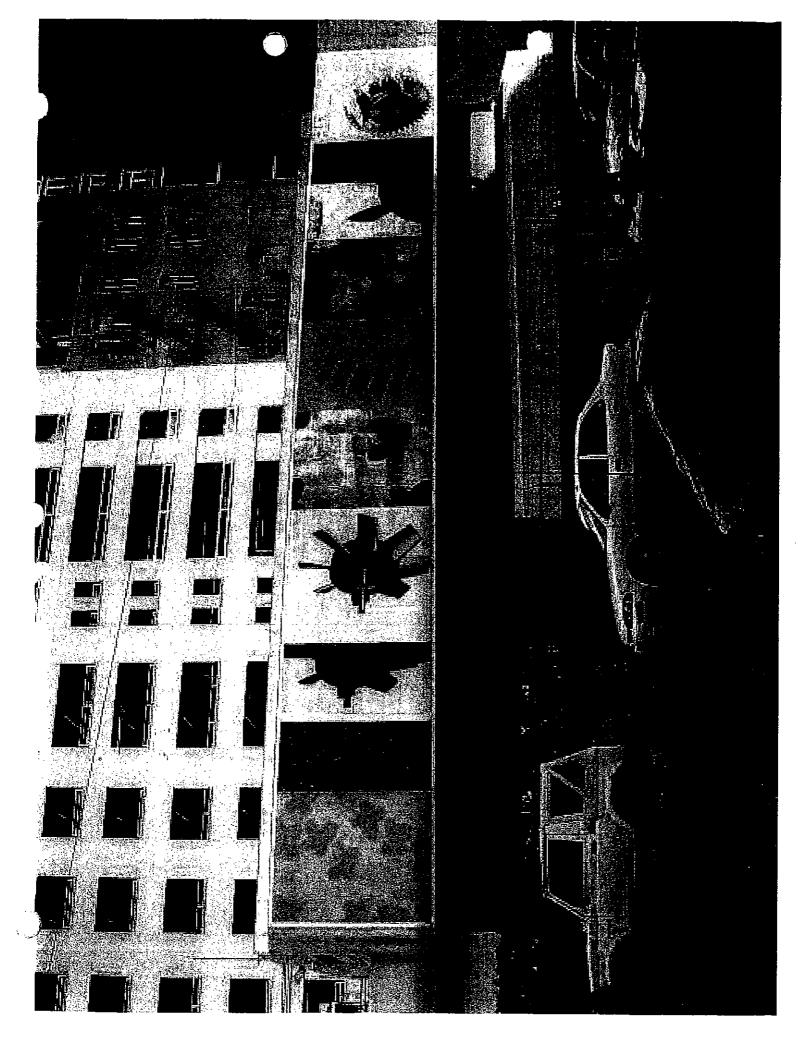
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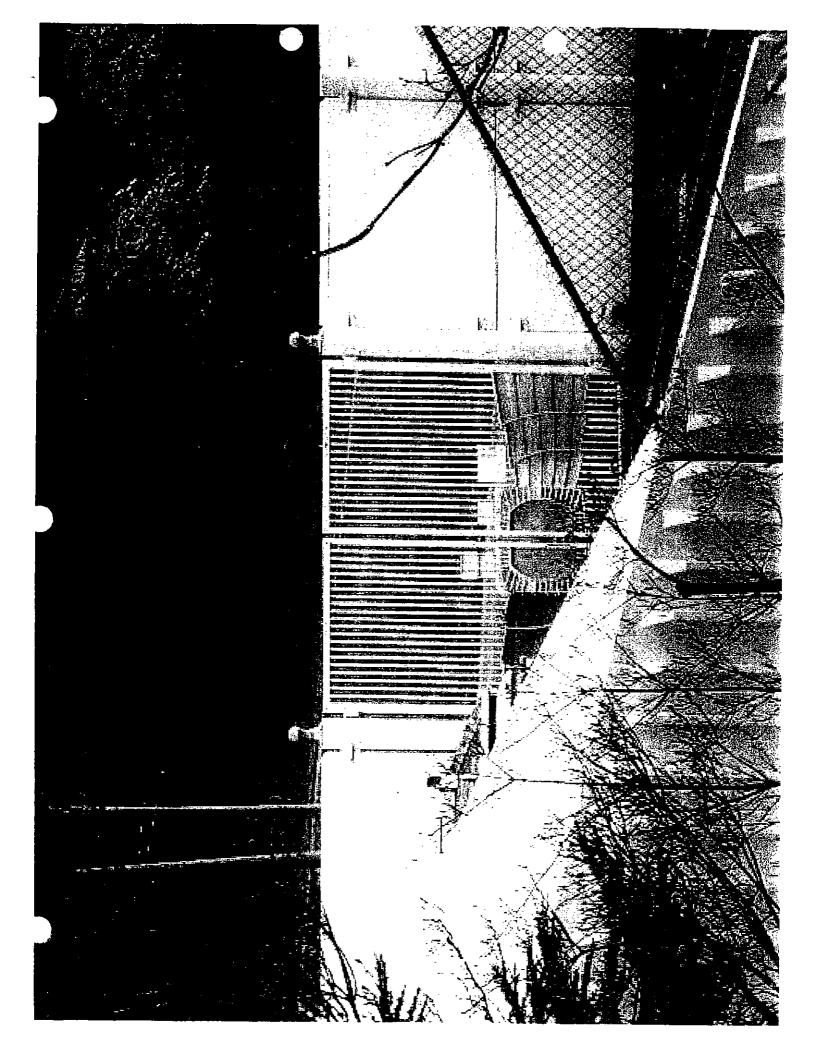


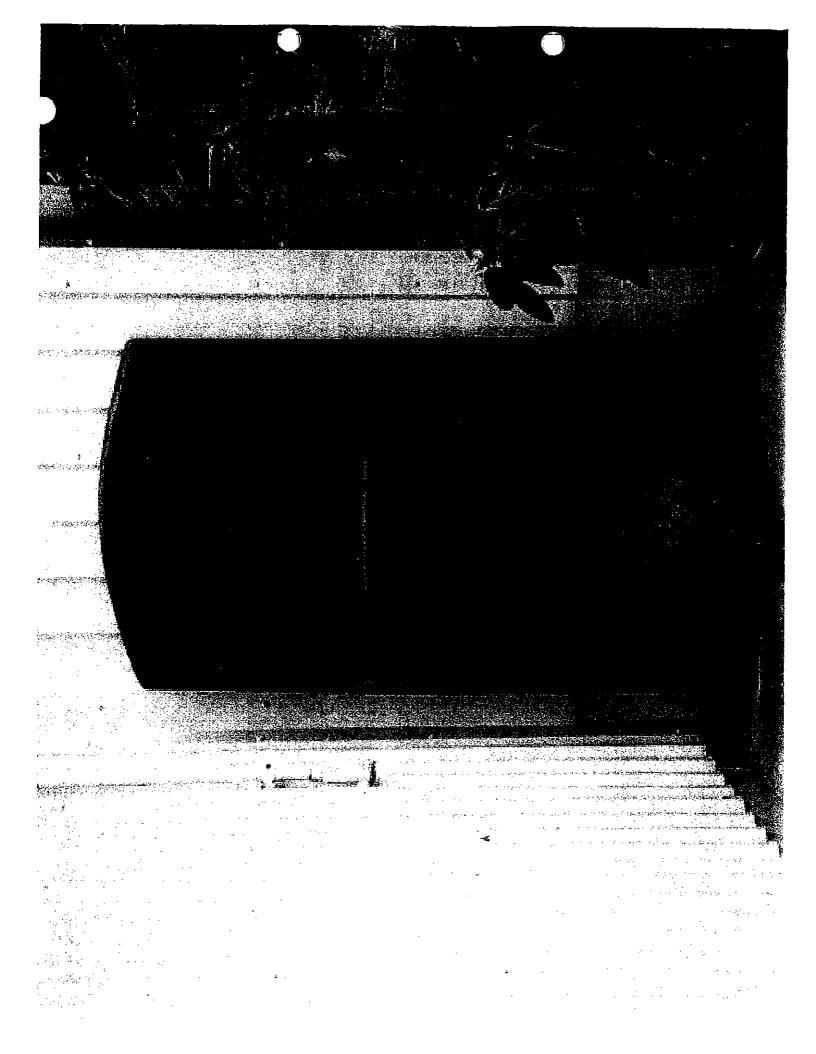




# APPENDIX I

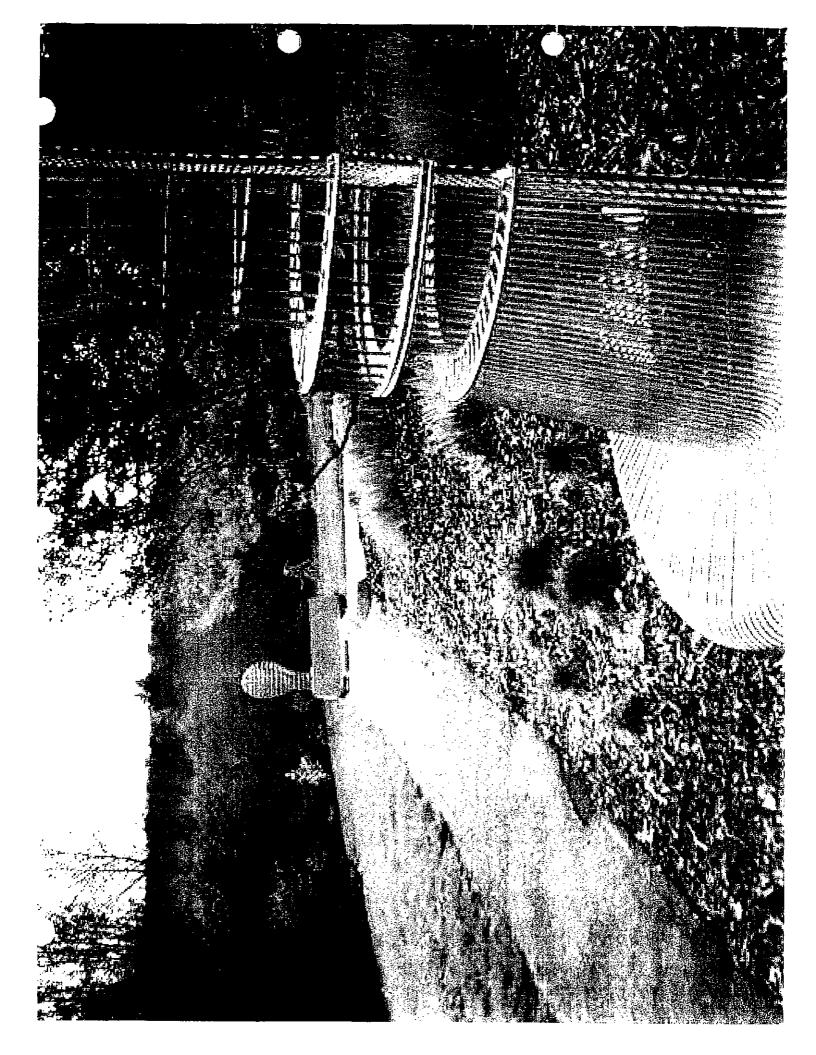
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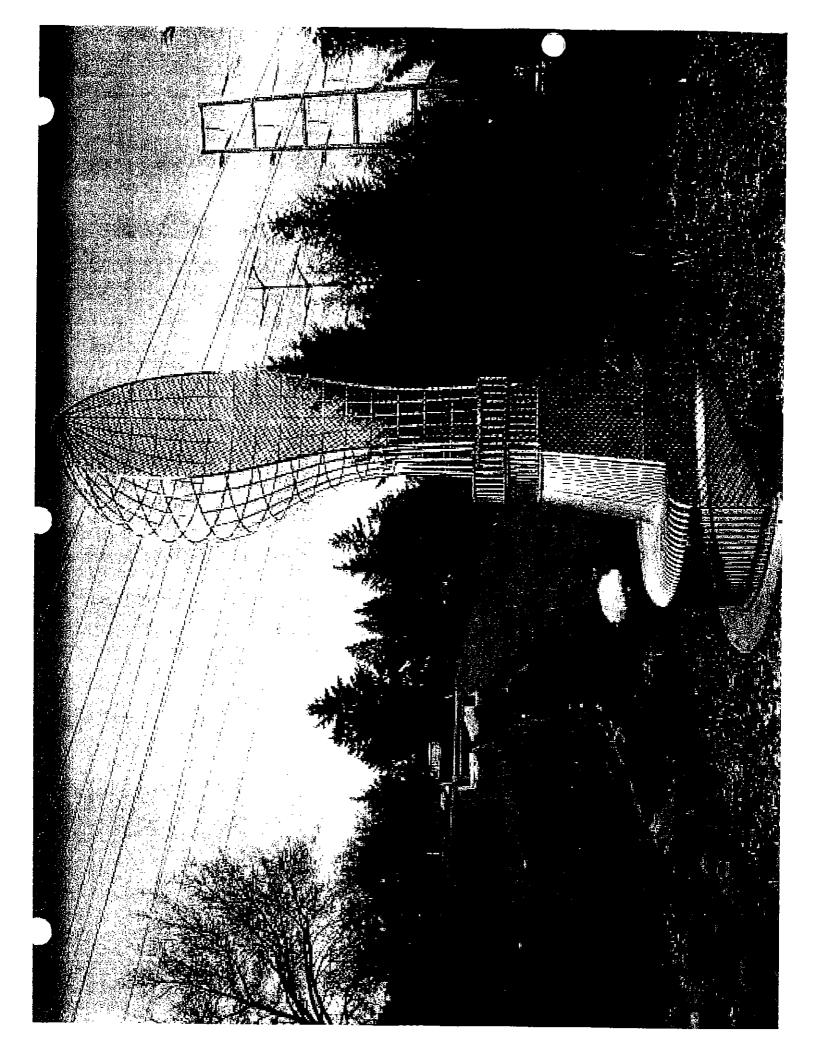










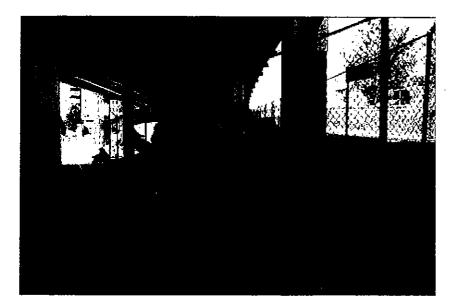






# APPENDIX J

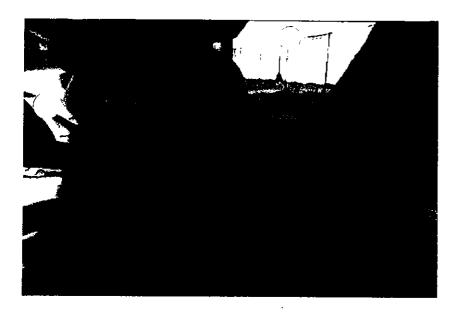
### Public Artworks - Wave Rave Cave

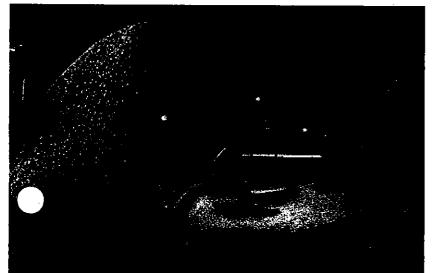


WAVE RAVE CAVE 2002. Seattle, WA. 55' x 135' x, concrete, pea gravel, specialty lighting A dark cave-like underpass is animated with pea gravel covered giant "coolwhip" waves that undulate and erupt from a sculpted sea of pea gravel. At night, moving "psychedelic" lighting animates the space and recalls the area's history of raves, nightclubs and bohemian artist lofts.



Project Collaborators/ special thanks to: Seattle City Light Crews, Emily Stachurski, Pacific Studios, Belltown Community, Casa Latina, SPU, WSDOT Funding: Seattle City Light % for arts funding, Administered by the Seattle Arts Commission





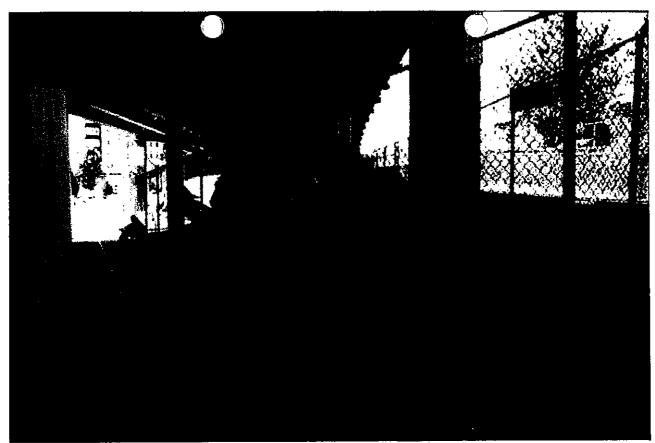




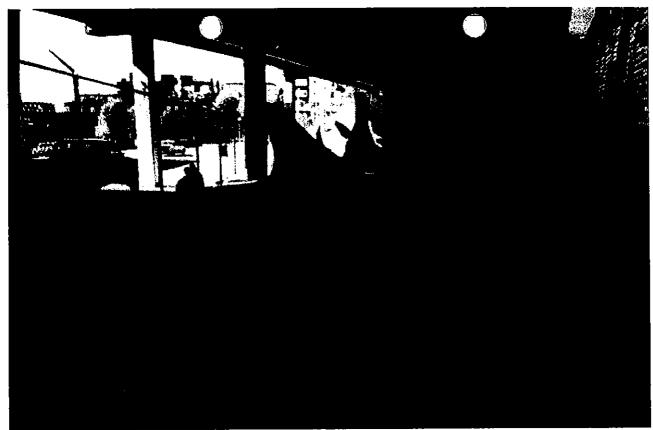




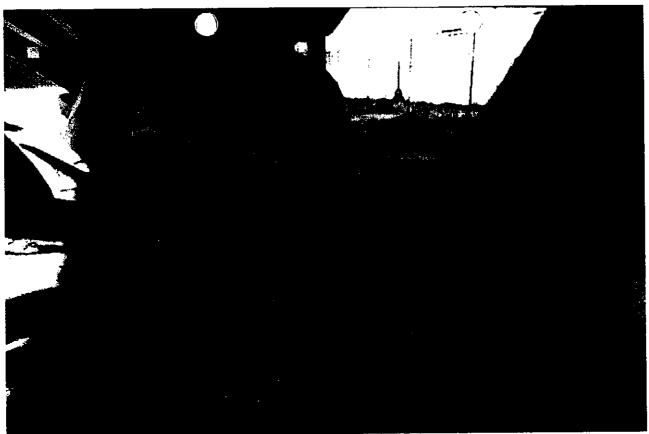
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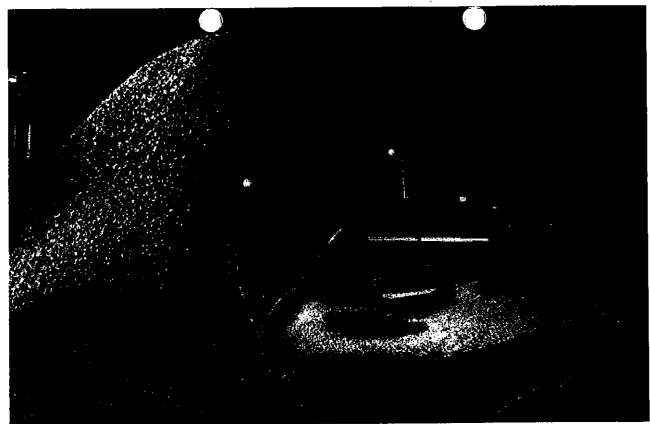
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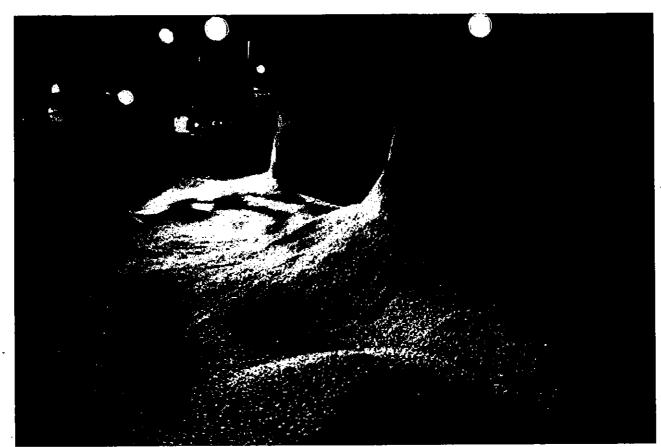
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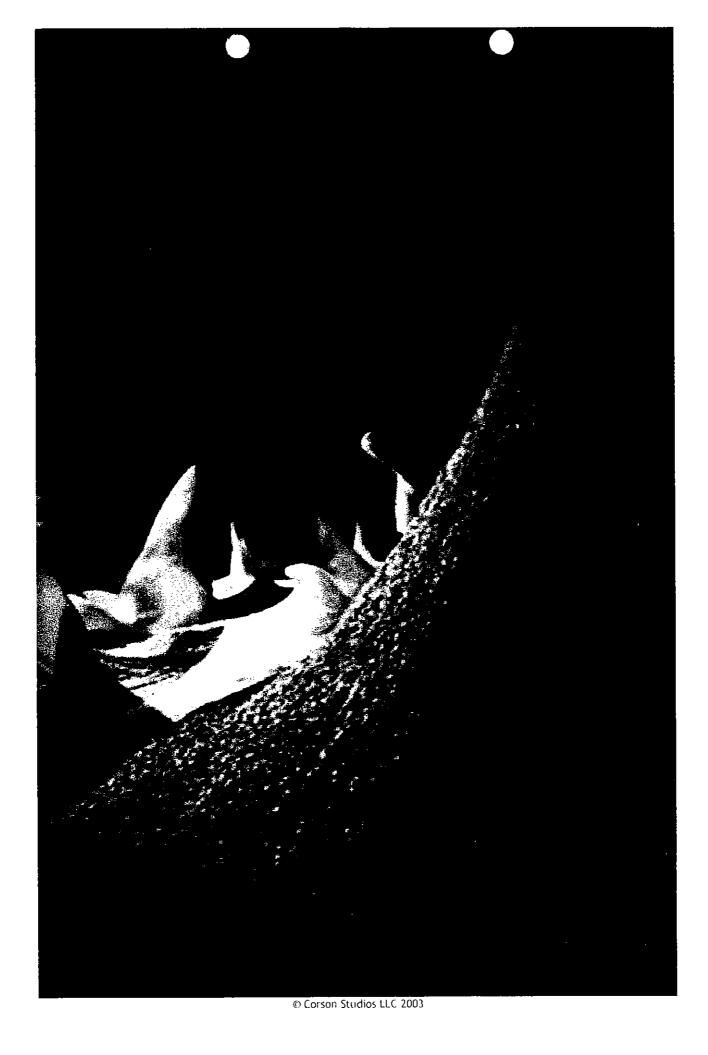
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# APPENDIX K

HOME WHAT'S NEW SEARCH CONTACT US

WHO WE ARE

WHAT WE DO FUNDING APPLICATIONS WORKSHOPS & FORUMS

NEWS

SHOWCASE

**PUBLICATIONS** 

CITY SPACE

KEY TOWER GALLERY

**VIRTUAL GALLERY** 

**SEATTLE CINE-VISIONS** 

THE PEEPHOLE SERIES

**ELECTRIC GALLERY** 

# **SHOWCASE**

SKAGIT STREAMING DAN CORSON

ARTISTS-IN-RESIDENCE, SEATTLE CITY LIGHT

Skagit Streaming, a multisite video artwork, demonstrates the activities of salmon, bio-organisms and shoreline life at the aggregate ponds downstream from the Skagit Dam.

Skagit Streaming is currently being broadcast on the Web and projected on the westfacing side of the Bon Marché garage. It is also displayed on a video monitor on the ground floor of the Seattle Municipal building.

### Visit Skagit Streaming Oniline

Skagit Streaming Photo: Dan Corson



- **CELEBRATING BLACK HISTORY** HINOM
- **TELLING STORIES: NARRATIVE** PHOTOGRAPHS 2002
- ► SEATTLE COLLECTS 2002
- ► PRINTWORKS 2002
- NORHTWEST MASTERS
- FACE OF THE ARTISTS
- NORTHWEST VISIONS
- RECENT PORTABLE WORKS
- SEATTLE COLLECTS 2001

SKAGIT STREAMING

TRADITIONAL CONTEMPORARY ETHNIC TEXTILES

City of Seattle



home

Project Description

What You May See

Artist Statement

Who and How

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Your Feedback

The Skagit Streaming large-scale evening projection is in the process of being relocated to a permanent location in downtown Seattle. There is no date when it will re-open, but check back periodically for updates. Until then, you can still visit us here on the web or in the lobby of the Municipal Building 600 - 4th Ave.

The Beginning

Skagit Streaming was a product of the First Artist-In-Residency Program at Seattle City Light (SCL), a publicly owned electrical utility. This residency was an experiment designed to create artworks from within the utility as well as to help identify future opportunities for other artists. This new position will transfer to other artists in two year cycles. This residency program is part of the Seattle Arts Commission's (SAC) Percent for Arts Program.

The idea is simple. At the Skagit River three cameras provide three windows, each telling a different story and offering ever-changing perspectives:

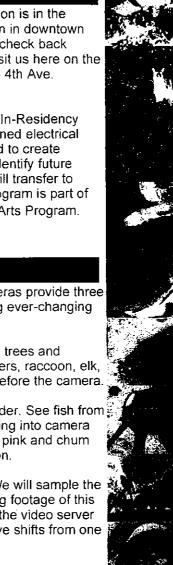
Bearcam - a static shot of the flowing river, reeds, trees and creekside animals. Expect to see bear eagles, otters, raccoon, elk, deer, butterflies and other animals as they pass before the camera.

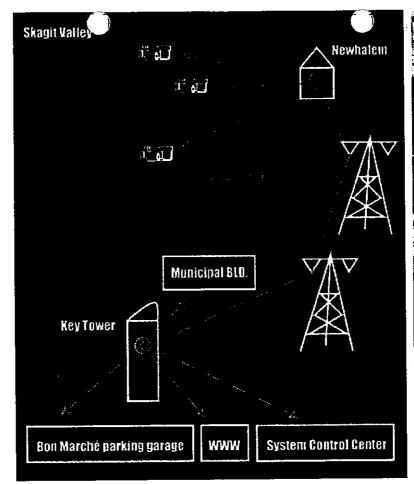
Fishcam - under water, hidden in an artificial boulder. See fish from 3/4 side perspective as well as fish noses swimming into camera range. Some of the fish we can expect to see are pink and chum salmon, trout and the occasional steelhead salmon.

Bugcam - captures the smallest life in the river. We will sample the river water and film it in a laboratory for fascinating footage of this microworld. Six hours of footage will be stored in the video server and accessed like a live camera as the perspective shifts from one camera angle to another.

In the Skagit, the cameras will be turned on in the morning to send the video signal down the fiber optic cable to Seattle where the signal will split to a live and a recorded version. The live version of the Skagit images will play on the World Wide Web. The recorded version will be stored on a "digital VCR" server for viewing after dark. In the evening, the "live video" will play back 4-6 hours of unedited footage. The video images will be projected onto 34' x 40' foot white screen attached to the west face of the Bon Marché Department Store parking garage at the corner of 2nd Avenue and Pine Street in downtown Seattle.

Three cameras - bearcam, fishcam and bugcam - create a practical answer in an artistic concept. Taking us from large mammals to the microworld, they reveal the invisible world behind our electricity.





### Field Location

Cameras are located close to the town of Newhalem. The site is a former gravel pit that was rebuilt into a spawning channel for salmon. It is now a spring-fed tributary to the Skagit and known for its productive spawning habitat. It is off the electrical grid so the economical and ecological solution was a solar array and batteries to power the cameras and switcher and modem.

### Where is Newhalem?

The area is home to some of Seattle's hydro power generation facilities.

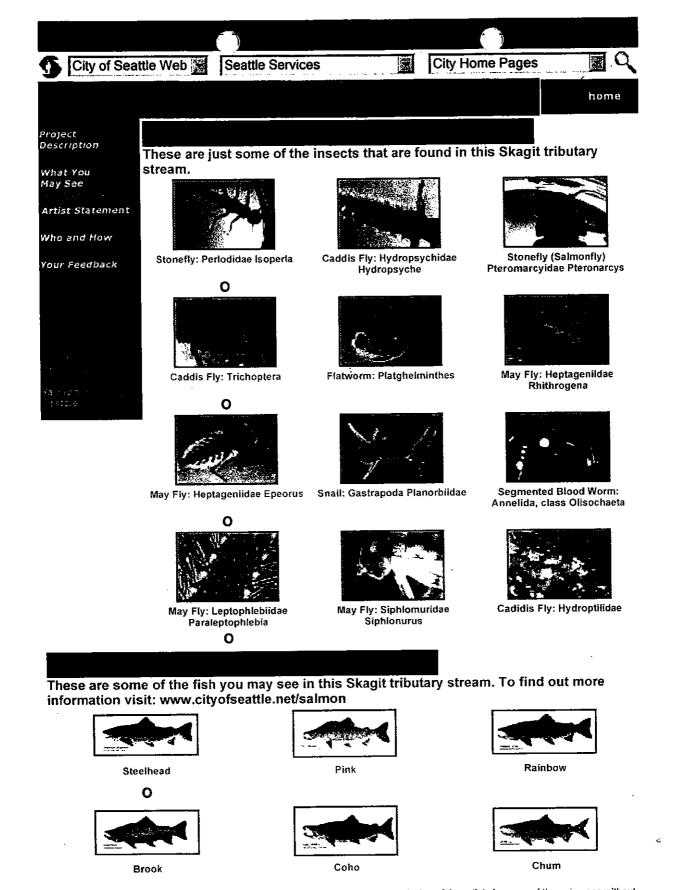
### The Projection Equipment



A movie grade video projector is attached to the back of an AK Media billboard in the Diamond parking lot west of the Bon Marché parking garage. It will be encased in a temperature-controlled box hanging about 45 feet in the air. Ellipsoidal spotlights around the box discourage graffiti while projecting interesting "screen"

saver" patterns on the white screen when the projector is not in use (from midnight-6 am). After the first year of operation, other artists may be commissioned to create images, textures or patterns that can be projected using these spotlights. The projected image will be 28' high x 40' wide.

top



The fish illustrations on this site are copyrighted and are displayed with the permission of the artist. Any use of these images without the written permission of the artist and Charting Nature is strictly prohibited. Copyright © 1997.1998,1999,2000,2001 Charting Nature. www.chartingnature.com

## When are the Salmonids in our stream?

Spawning •••• Adults in Stream To find out more information visit WWW.Cityofseattle.net/salmon

Species	Jan	Feb.	Mar, -1	Apr.	May	Jun.	Jul.	Aug.	Sep	Oct.	Nov.	Dec.
Coho				<i>;</i>			····	••••				
Chum		<u></u>							••••	••••		
Pink							••••					
SteelHead							••••		••••	••••	••••	
Brook Trout	••••	••••	••••	••••	••••	••••	••••				••••	••••
Rainbow	••••	••••	••••				••••	••••	••••	••••	••••	••••

Home | Living | Business | Visiting | Mayor | Council | Police | Fire | Jobs News | Events | Traffic | Weather | City Directory | About | Contact Us | Search | Text Who and How

A video image of " the twigs" bobbing in the water was the first spark of an idea that took over two years to develop into Skagit Streaming. Of course, many other ideas and influences allowed this project to take form and only some of them will I try to briefly discuss now.

Your Feedback

"The Twigs" was a live feed set of video images from the Ross, Newhalem, and Gorge Dams on the Skagit River. It was a crude way for the dam operators in Seattle to see what the water level was at the discharge sites, as well as to see that the dams had burst. There are many complex ways that City Light uses to monitor water level, pressure and a host of other operational concerns, but the significance of a TV image of bobbing twigs in the System Control Center was truly a strange reality check to me.

When I heard that there was a new fiber optic connection being run from the Skagit to Seattle to improve communications and allow for video conferencing, I asked if some of the fiber space could be shared for this artwork. And so began this project.

Around this time, I was talking with Laurie Geissinger in SCL's Environment and Safety division about inter-connective systems and infrastructures and the link between the public here in Seattle as consumers of electricity and our connection to the sources of that power. City Light has repeatedly come out with strong ecological policies that continue to place the protection of salmon habitat and water flows ahead of power generation. We began discussing this artwork in terms of a bio-feedback loop, where the public could see and therefore help hold City Light accountable for the continued success of the salmon in the Skagit, while connecting a busy urban population with the cycles of nature they often have little awareness of. The project could almost be considered a "canary in a coal mine" allowing the salmon to be an indicator for the health of the region...and ultimately us.

As the project began, America was starting its love affair with live web cams via the internet. The Jenny-Cam was making national news where anyone could tune into Jenny's private uncensored dorm-room life. Boring, comforting or scandalous, it was all there ...depending on when you tuned in. The first reality TV programs were very sensationally focused like "When Animals Attack", "America's Scariest Home Videos" or "Cops." And MTV had successfully grabbed the attention of Generation X with psychoserial reality soap programs like "The Real World" and "The Road Rules".

Being born from within this atmosphere, the concept behind Streaming was not all that unusual. However, there are a few twists that elevate this work beyond a salmon-cam project. Not only do we observe an unedited life circle- the emergence of alevin from the eggs to the decaying of salmon carcasses, but we open the doors of perception from the microscopic to macroscopic to fish and finally to bear or potentially eagles. This live food chain being projected on the side of a major department store's parking garage at a busy downtown intersection adds another layer of meaning.

The concept of live vs. recorded images has been an ongoing



debate with the sproject. The ability to show live insects in all on the project. Yould have been impossible on many differed. It levels especially if a microscope would have been installed in a riparian environment. So, the solution of pre-recording that particular sequence and feeding it into the other parts of the project was a singular compromise of the concept of a real-time window into the Skagit.

Entertainment. Sometimes the window into nature may not be as exciting as we all would like it to be. A good amount of the year will have moving water and not much activity attached to it. We all want action. Is it up to art or nature to provide us with that? We can not have it both ways, live unedited sequences and the intensity of constant drama. My response to that is to allow for the quiet sequences of time that reveal their own secrets and provide a sustaining energy of its own. In addition, 1/3rd of the time recorded images of the insects will provide an active and engaging spectacle. From an artist's perspective, I certainly believe that art can be entertaining, but it is not solely entertainment.

Also interesting was the idea of the serene natural landscape being interjected into a busy cement filled downtown intersection allowing for an interesting layering of messages to be expressed in a non-didactic way. The piece becomes natural oasis in the urban corridor. And certainly, it is the best place to wait for your bus.

From a visual perspective, the idea thrilled me of seeing a 40' long caddis fly larvae crawling across the parking garage giving an interesting juxtaposition of scale (a new Godzilla,) demonstrating different modes of transportation and displaying nature's idea of fashion. You see, the caddis fly larvae creates a house not unlike a snail that it walks around with attached to its soft backside. The house is created with choices found from the immediate surroundings. Sometime bark and leaves, sometimes pebbles or mica. One video sequence of a mica- incrusted caddis that looked as if it were wearing a sequined ball gown.

So, the piece evolved to become this inter-connective net of live images from the Skagit that would weave itself into various city agencies that deal directly with Skagit issues. When complete, the locations will be: The SCL System Control Center (mounted next to the twig TV) from where operators actually control the water-flow through the dams, the Muni Building- where ultimately energy policy decisions are made and publicly on the WWW, where individual workers can watch live Skagit activity or download updated screensavers of the days images onto their individual computers. I really liked the idea of having these images flowing by the people that worked directly with the river. It was my hope that having a constant visual reminder allows workers to see how their actions directly affect the environment. Therein lies the biofeedback.



03/11/01

Project Description

What You May See

Artist Statement

Who and How

Your Feedback

#### Dan Corson, Artist

Dan is an idea based public artist, theatrical scenographer and Seattle City Light's (SCL) first Artist in Residence. He currently focuses on creating permanent public art in contrast to past work creating ephemeral installations and environmental sculpture. His exciting projects for SCL are tied to capital improvements or respond to the mission of the utility and the magic of the natural and built environment of the hydroelectric facilities. Dan is also creating two public artworks for the Cedar River Watershed's Visitor Center in North Bend. He serves as one of the lead System Artists for Seattle's LINK Light Rail system, conceptualizing the art plan while developing system-wide artwork as well as discreet pieces. He created large-scale ephemeral installations in many sites around the world including Maine, California, Mexico, Australia, England, Prague and Madagascar.

- Artist Statement
- Artist Web Site http://www.corsonart.com

### Steve Monsey, Technical Video Consultant

Steve designed the complex internal video system and helped piece the technical side of the project together. Steve and Dan have worked together on several high tech art projects over the years.

### Mike Losk, Project Communications Engineer, Seattle City Light

Mike designed the system to bring live video from Newhalem into Seattle using existing SCL fiber optic communications systems and coordinated with construction crews.

### Laurie Geissinger, Supervisor and Facilitator, Seattle City Light

Laurie supervised the project and helped secure the resources and labor needed to integrate public art into SCL systems.

#### Barbara Goldstein

Barbara is the manager of Public and Community Art programs for the Seattle Arts Commission. In that capacity she develops the biennial Municipal Art Plan, oversees staff managing and maintaining the City's permanent, temporary and portable art collections. She also manages special projects.

The following public and private partners provided funding or assistance for Skagit Streaming:

Seattle City Light

Seattle Arts Commission

HUD (The Federal Department of Housing and Urban Development)

SEATRAN (Seattle Transportation Department) Ken Alhadeff, Alhadeff Properties

Martin Smith III, Martin Smith Inc.

Paul and Debbie Brainerd

David and Catherine Skinner



#### 0

### Special Thanks to the following:

Al Solonsky
Alice Ekman
Arvid Stendal
Ashley Rawhauser
Bill Davis
Bob St. Andre
Berndt Stugger
Mark Butler
Bruce Blood, City of Seattle Web Team
Craig Williams
Dave Pflug

Dave Rowan
Debra Wild
Elaine Bild
Gary Zarker

Jan Mulder Jim Earley

Kathryn Claeys, SEATRAN

Kile Ho

Kristian Kofoed, DCLU

Lane Cubell Laurie Geissinger Lisa Perrin, Royal King,

and Vicki Moulder SPU IT Web team

Lynne Moore and the SCL Metal Shop

Marcia Iwasaki Network Crews

Pat Bolger, Bon Marchel

Peter Clarke Rick Obie

Seattle Communications Crew

Sierra Hansen

Skagit Communications Crew Stephanie Mc Near, AK Media

Sue Earls Susan Trapnell Tan Trinh Tony Hopkins

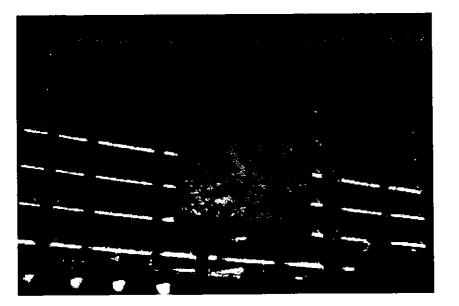
Wanda Davis and the SCL Electric Shop



03/11/01

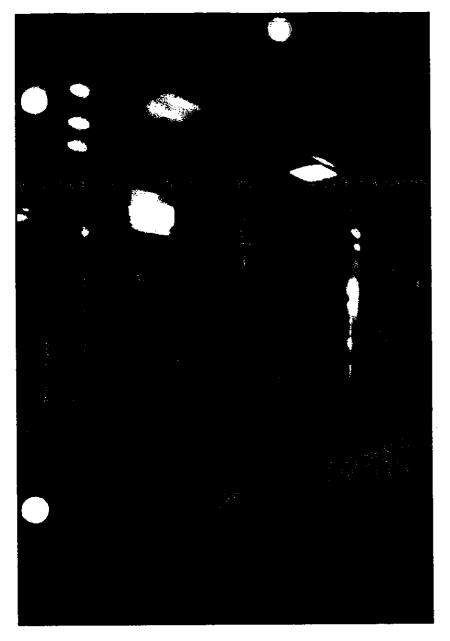
top

Home | Living | Business | Visiting | Mayor | Council | Police | Fire | Jobs News | Events | Traffic | Weather | City Directory | About | Contact Us | Search | Text Public Artworks - Skagit Streaming



**SKAGIT STREAMING** Seattle WA, + access on the WWW www.skagitstreaming.net

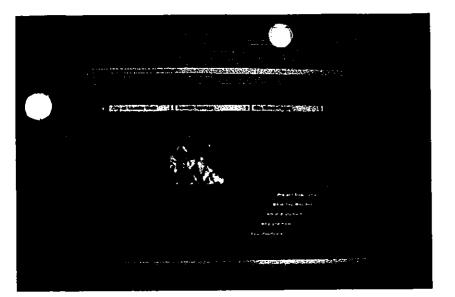
Skagit Streaming is a complex multi-site project providing a window into the Skagit River system (Seattle's hydroelectric facility) via fiber optic cablefrom 150 miles away. "Live" Streamed video images (from 3 cameras): Riverside views, underwater footage and microscopic images are then sent into various city buildings, the WWW and projected nightly 40' across on the side of a large parking garage. The www aspect of the project provides streaming video, feedback and educational information. This project aspires to connect the downtown urban core with the source of its electricity and quiet cycles of nature. At the same time, it acts as a sort of "canary in a coal mine" by monitoring strategic fish populations for the public.



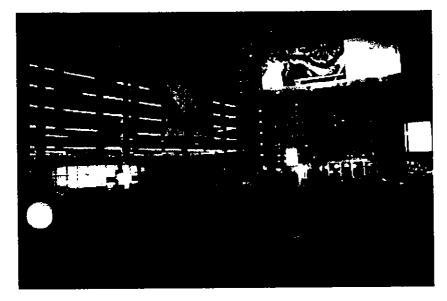


Skagit Streaming "bug-cam" on the Bon Marche' parking garage. Special Thanks Steve Monsey, broadcast engineer and many others: FUNDERS and SPECIAL THANKS Administered by the Seattle Arts Commission

www.skagitstreaming.net web site includes grass roots salmon education links, education site



and oject information.

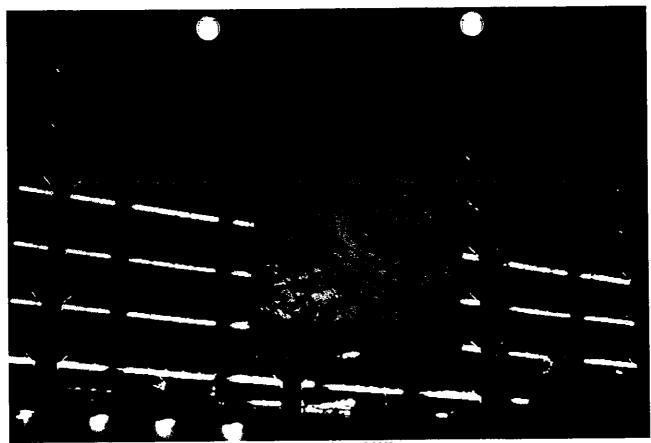


40' wide screen on the side of the Bon Marche Parking Garage, Seattle WA

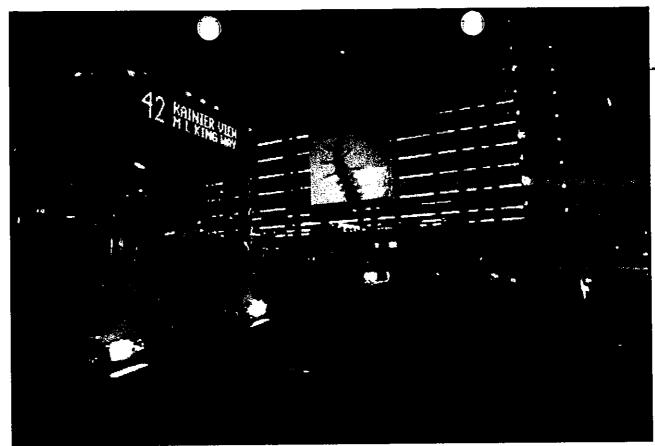


Skagit Streaming Quicktime Movie

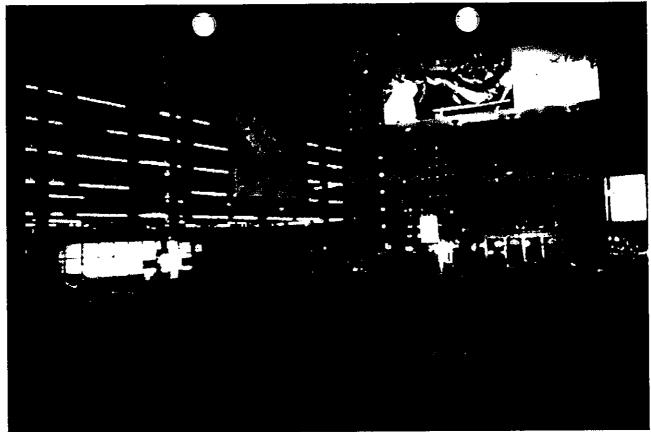
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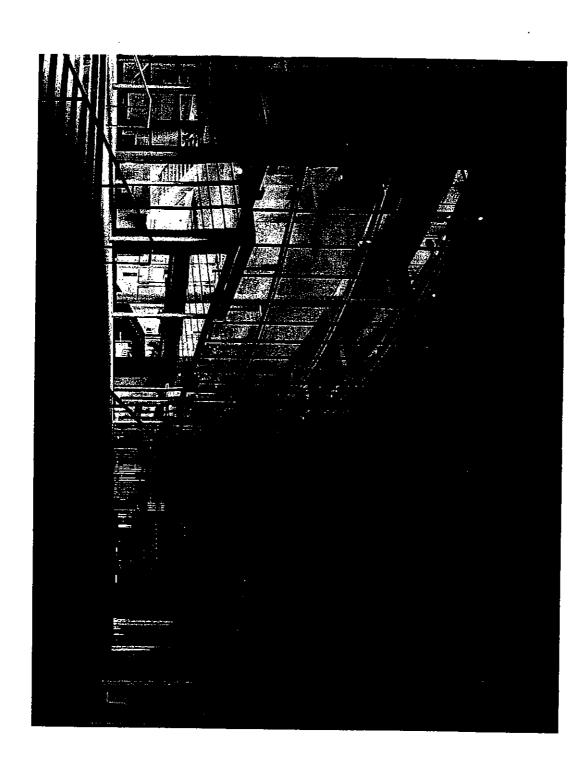


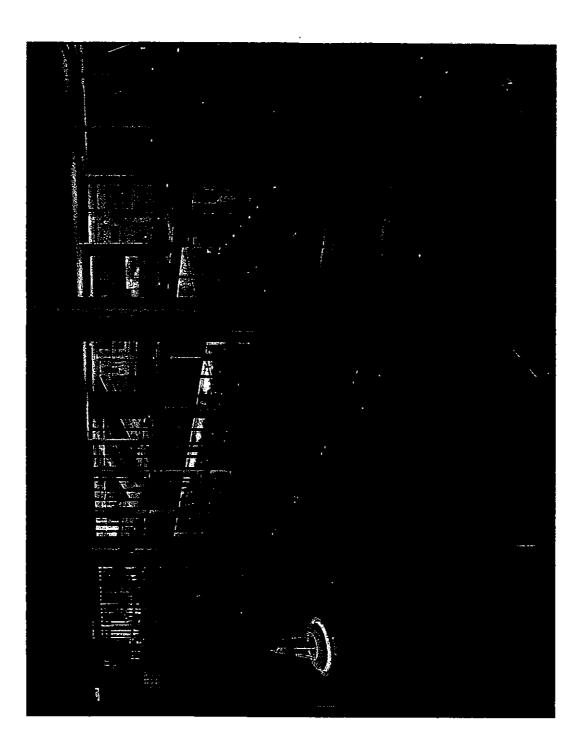
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### APPENDIX L





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# APPENDIX M



# APPENDIX N



### OFFICE OF THE ATTORNEY GENERAL

October 7, 1985

The Honorable Douglas N. Jewett
Seattle City Attorney
Law Department
10th Floor, Seattle Municipal Building
Seattle, WA 98104

, OCT - 8 1985

Dongras II. Teweth

Attention: Gordon B. Davidson

Assistant City Attorney

Re: State Auditor's Examination Report No. 49012 City of Seattle

Calendar 1982 A. G. No. 48315

Dear Gordy:

Many thanks for your lengthy letter dated August 28, 1985, together with a great deal of supporting material concerning Audit Finding No. 9 of the above-referenced examination report. Ed Mackie recently observed, in connection with the assignment of opinion writing tasks within this office, that the longer an attorney spent writing an opinion (or procrastinating about writing it), the longer the resulting document had to be to justify the time spent. Tempted as I originally was to think that shoe might fit your effort, I, in fact, found all of your letter and supporting material helpful and valuable in responding to the issues presented by Audit Finding No. 9.

To clear up any initial misunderstandings (probably caused more by my wisecracks at a WSAMA meeting than by anything I've committed to writing), neither the State Auditor nor I have ever taken the position that the city utilities may not legally expend utility funds for the purchase or placement of art. We bureaucrats are not necessarily such philistines as to think all utility facilities must be ugly and utilitarian. As you eloquently point out, there is a place for beauty and art in the administration of the utility as there is in the administration of any governmental agency, and I have no specific

### OFFICE OF THE ATTORNEY GENL AL

The Honorable Douglas N. Jewett Page 2 October 7, 1985

disagreement with any of your preliminary remarks. Indeed, I agree quite heartily with virtually all of Jorgen Bader's analysis in his 1976 opinion to the Executive Secretary of the Seattle Arts Commission (letter of Jorgen Bader to John Blaine dated April 2, 1976). I was struck with, and agree with, the standards set forth by Jorgen at pages 5 and 6 of his letter, for determining (in connection with the lighting utility) whether and when it is appropriate to use utility funds for a particular piece of art

Indeed, the concern I have expressed from time to time is that it is so easy to lose track of those standards and to think of the utility funds as merely another source of financial support for what is (or becomes indistinguishable from) the promotion of art as a general government purpose. So long as there is a discernible nexus between the use of utility funds and the purposes for which the utility exists, I will not argue about an expenditure. My understanding of Audit Finding No. 9 is that it was intended to criticize those mexpenditures which had no such discernible nexus.

The second half of your letter serves the purpose of disputing the facts on that precise issue. The State Auditor took the position that utility funds were used to pay general "overhead costs" of administering the arts commission, thus violating RCW 43.09.210, and perhaps also Ordinance 105389.

In response, you supply detailed records tending to show that while arts commission employees indeed work on the municipal arts program of purchasing art for (in this case) utilities with their capital construction money, they keep careful track of their time. Only employees who spend their full time purchasing art for the utilities have their full time charged to that program. Employees who spend only part of their time on that program keep careful records, you say, of the hours spent and charge their time accordingly. Only the executive director charges a more or less fixed percentage of time to the utility, a percentage which you diem to be conservative.

Accepting the accuracy of all the information you have supplied (I have no reason to doubt the accuracy of any of it, and it is not essentially inconsistent with the information contained in the audit finding), I am prepared to grant most but not all of your point. The lighting utility (the identical analysis would of course apply to the other city utilities) could have on its own staff people engaged wholly or partially in the business of acquiring art for the utility, and it would be lawful (always assuming the "nexus" I referred to earlier) for those people to be paid from utility funds. Where that function is performed for the utility by employees of another

### OFF. E OF THE ATTORNEY GENL AL

The Honorable Douglas N. Jewett Page 3 October 7, 1985

city agency--the arts commission--it is, I grant, not only appropriate but perhaps mandated by RCW 43.09.210 that the arts commission be reimbursed for the actual cost of performing that service for the utility. I suspect that the examiners were beginning from the proposition that the acquisition of art is per se a general government function, and they may have been mistaken on that particular point.

To the extent you can establish that the employees of the arts commission are performing a function for the utility then, they can charge their time and be reimbursed by the utilities for their work. Naturally, this principle would apply only to the extent they are directly benefiting the utility and must not be applied to activities which are of general benefit to the city or the arts.

I cannot grant, however, that it is appropriate for the executive director of the arts commission to charge any time to the utilities. While the acquisition of art for the utilities may be a legitimate utility function, the arts commission itself is a general governmental activity of the city. The executive director of the arts commission is an employee of the general city government whose functions must be assigned for legal purposes to general government and not to the utilities. have said on several occasions that it is unlawful and inappropriate to charge the time of a general administrative officer (county commissioners and mayors and city council members were the examples we have used) to utilities or enterprise Our rationale has been that, even to the extent such general officers are serving or doing work directly connected to the utilities, their own function vis-a-vis the utility is that of general administration and is therefore a general government function, not a utility function.

While there is perhaps one or two more ounces of justification in charging a portion of the time of the arts commission director to the utilities than there would be in, for instance, charging the time of the mayor of Seattle to the utilities (a proposition which, I think, was tentatively advanced a few years ago but which, I assume, was summarily rejected), I still think it must be fairly easy to establish, since the arts commission obviously has a number of employees, that the executive director's functions are general, managerial administrative. Thus, even though he may spend some proportion of his time (perhaps 10 percent, perhaps much more) issues relating to the acquisition of artwork for the utilities, his relationship to those projects is that of a general government administrator, and not that of direct service. Thus, it would be no more appropriate to charge his time to

### OFFICE OF THE ATTORNEY GENL. (AL

The Honorable Douglas N. Jewett Page 4 October 7, 1985

the utilities than it would be to charge the time of the chief of police to the utilities on the theory that some proportion of the chief's work related to the protection of the utilities from crime.

To summarize, if you will grant that the director of the arts commission must charge all of his time to the general government, I will grant that the actual time spent by other arts commission employees on the acquisition of artwork for the utilities, and to the extent that that work directly benefits the utilities, that time may be reimbursed by the utilities to the commission. Let me know your thoughts at this point.

I note that we have still not yet tackled Audit Finding No. 8 (arts commission should purchase only artwork with complete ownership rights) or Audit Finding No. 10 (arts commission should place artwork in authorized public buildings). In both cases, the philosophical underpinnings of the relationship between the city and the arts is tackled a bit more directly than in Audit Finding No. 9. Again, I think the keypoint will be the use of art derived from enterprise funds such as the utilities in places or for purposes that cannot be tied directly to the functions or purposes of the utility. I look forward to your thoughts on those two findings.

Very truly yours,

JAMES K. PHARRIS

Assistant Attorney General

JKP:mlg

cc: State Auditor (2) w/enc.

### AUDIT FINDING 10

There may be some misunderstanding on the part of the A.G. as to the extent of artwork on private property. The source of funding, whether General Fund or 1% for Art, needs to be clarified. The 1% for Art program has no permanent artworks on private sites. The works at Daybreak Star are the closest since they are on "long term" loan. The SAC has used General Fund monies to co-sponsor, with non-profit organizations, a handful of permanent works on both public (e.g. Fremont Ship Canal) and private (Odessa Brown Clinic) sites. The latter category may need to be clarified as to ownership and access (perhaps through the use of an easement).

We sought and received guidance from the Law Department on the question of locating utility-purchased artwork on non-utility property. An opinion dated April 2, 1976 states this to be a permissible practice if "...the work is, by itself, or as part of a project, or comprehensive plan, designed to generate a public understanding or appreciation of lighting service provided, improve City Light's public relations, further its sales or service or the wise use of electrical energy, confer a business benefit, or serve an established utility purpose..."

Utility (primarily City Light) art is located on both City Light and other city-owned property. The acquisition and location of these works is carried out as part of a comprehensive plan for the City Light artwork collection which has the following components:

a) City Light is the single largest city department and its operations affect all sectors, business and residents of the city. City Light's purpose is the generation and sale of energy for and to the city. To carry out its purpose, the utility must create the facilities to generate and transmit energy — facilities which often have a negative impact on the aesthetic beauty of the city (e.g. block-long substations, utility poles and lines, manhole covers). These aspects of the utility's functions are a necessary, but often unattractive, addition to the city.

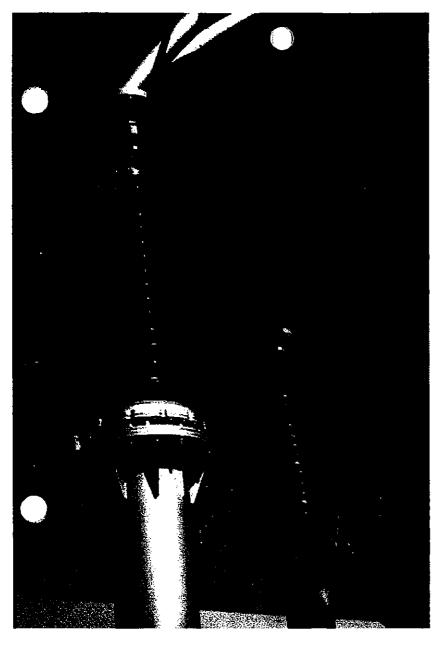
# APPENDIX O

Public Artworks - Temple of Power



TEMPLE OF POWER, Newhalem WA. An Edwardian "architectural folly" with an electrical twist designed for Seattle City Light using giant recycled electrical bushings and lightning arrestors. The gazebo responds to Newhalem's history and the area's hydro-electric tourism as developed in the 1920's. There will be slowly pulsating and glowing benches under the gazebo as well.

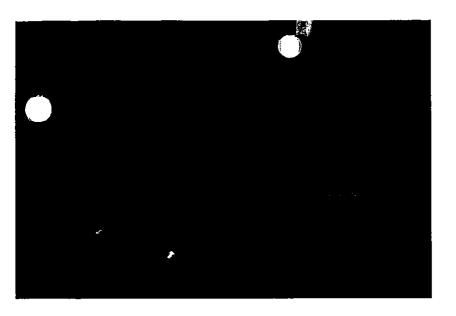
Recycled 7' tall ceramic and glass electrical bushings





3 of these "Glowing Benches" will live under the Temple of Power. The red LED's pulse and sequentially light up in the evening hours.

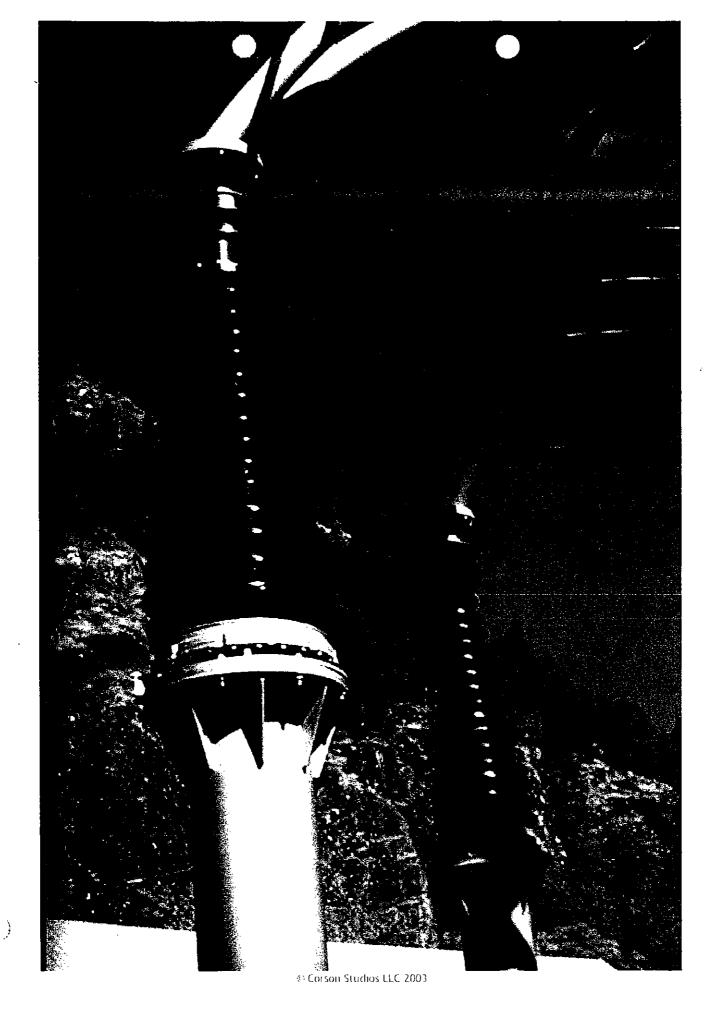
<u>Special Thanks to:</u> Gary Moore, Lynne Moore, Seattle City Light, Paul Sorey

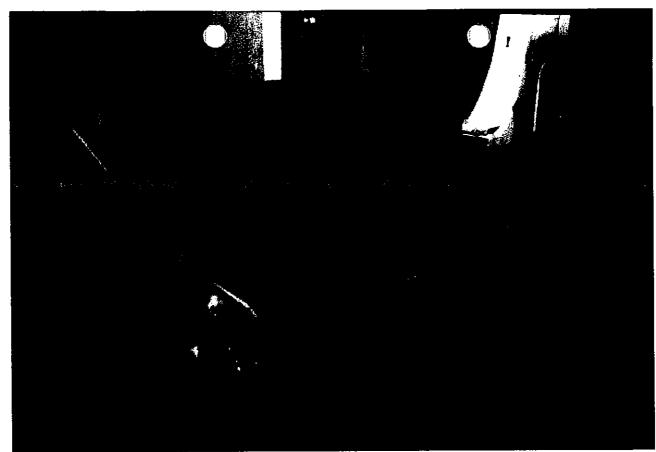


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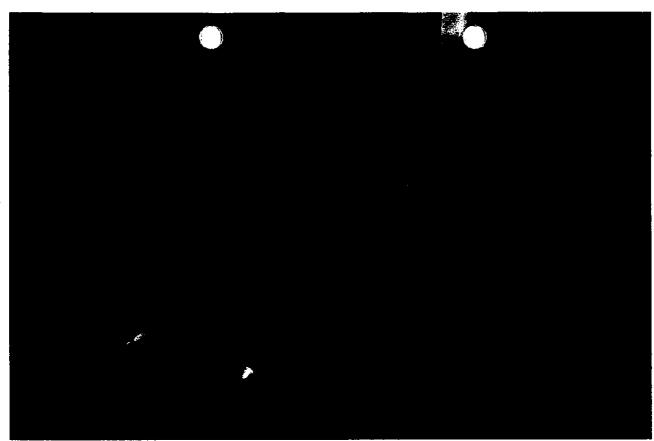


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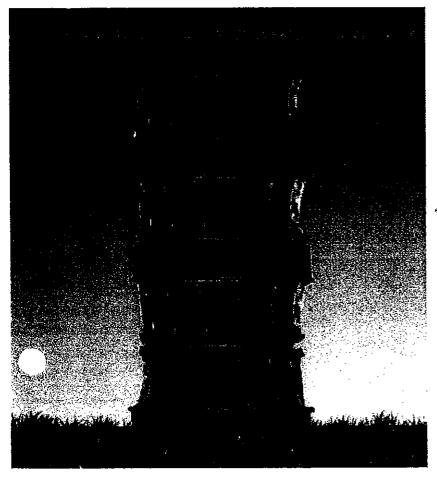




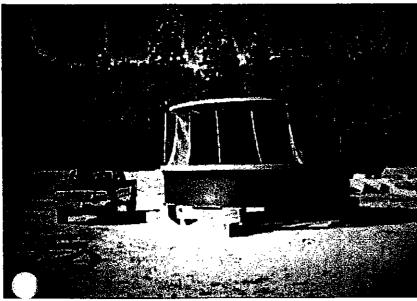
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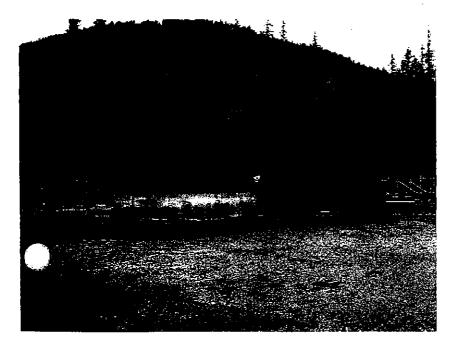
Conceptual study for Ocular Portals, A series of recycled steel turbine runners used to generate electricity. The entire sculpture will be aproximately 55' high including a base and tunnel that allows the public to look through the inside of the runners. The project will be located at the Boundary Hydroelectric Facility on the Canadian/ Idaho boarder. In the evening the lighting will spiral out the turbine runner fins casting giant spiral patterns onto the adjacent lanscape, like a giant luminaria.



Scale shot of each runner. Aprox weight for each steel runner is 94 tons. These runners were going to be carved up as scrap and shipped back to Seattle.





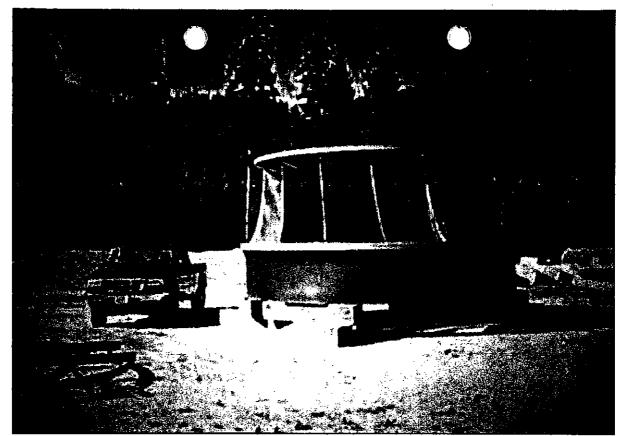


Interior views

2 of the 4 removed runners



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### APPENDIX P

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[Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-213, filed 5/3/01, effective 6/3/01.]

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- (e) Advertising which promotes the use of energy efficient appliances, equipment, or services;

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WAC 480-100-218 Securities, affiliated interests, and transfers of property. (1) Before an electric utility issues stock, securities, or other evidence of indebtedness, the utility must comply with the requirements of chapters 80.08 RCW and 480-146 WAC.

- (2) Before an electric utility enters into a contract or arrangement with an affiliated interest, the utility must file a copy or summary of the contract or arrangement with the commission in accordance with chapters 80.16 RCW and 480-146 WAC.
- (3) Before selling, leasing, or assigning any of its property or facilities, or before acquiring property or facilities of another public utility, an electric utility must obtain an authorizing order from the commission in accordance with chapters 80.12 RCW and 480-143 WAC.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-218, filed 5/3/01, effective 6/3/01.]

WAC 480-100-223 Advertising. (1) The commission will not allow expenses for promotional or political advertising for rate-making purposes. The term "promotional advertising" means advertising to encourage any person or business to select or use the service or additional services of an electric utility, to select or install any appliance or equipment designed to use the electric utility's service, or to influence consumers' opinions of the electric utility.

The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

- (2) As used in this section, the terms "promotional advertising" and "political advertising" do not include:
- (a) Advertising which informs customers how to conserve energy or how to reduce peak demand for energy;
- (b) Advertising required by law or by regulation, including advertising under Part 1 of Title II, of the National Energy Conservation Policy Act;
- (c) Advertising regarding service interruptions, safety measures, or emergency conditions;
- (d) Advertising concerning employment opportunities with the electric utility;
- (e) Advertising which promotes the use of energy efficient appliances, equipment, or services;

(f) Announce ints or explanations of existing or proposed tariffs or rate schedules; and

(g) Notices of meetings or commission hearings concerning electric utility rates and tariffs.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-223, filed 5/3/01, effective 6/3/01.]

WAC 480-100-228 Retention and preservation of records and reports. (1) Each electric utility must retain all records and reports for three years unless otherwise specified by the publication referenced in subsection (2) of this section. No records may be destroyed prior to the expiration of the time specified by the publication referenced in subsection (2) of this section.

(2) The commission adopts the publication, Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies, published by the National Association of Regulatory Utility Commissioners as the standards for utility records retention. Information about the Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies regarding the version adopted and where to obtain it is set out in WAC 480-100-999, Adoption by reference.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 01-11-004 (Docket No. UE-990473, General Order No. R-482), § 480-100-228, filed 5/3/01, effective 6/3/01.]

WAC 480-100-238 Least cost planning. (1) Purpose and process. Each electric utility regulated by the commission has the responsibility to meet its load with a least cost mix of generating resources and improvements in the efficient use of electricity. Therefore, a "least cost plan" must be developed by each electric utility in consultation with commission staff. Provision for involvement in the preparation of the plan by the public will be required. Each planning cycle must begin with a letter to the utility from the commission secretary. The content and timing of and reporting for the least cost plan and the public involvement strategy must be outlined in a work plan developed by the utility after consulting with commission staff.

(2) Definitions. "Least cost plan" or "plan" means a plan describing the mix of generating resources and improvements in the efficient use of electricity that will meet current and future needs at the lowest cost to the utility and its ratepayers.

(3) Each electric utility must submit to the commission on a biennial basis a least cost plan that must include:

(a) A range of forecasts of future demand using methods that examine the impact of economic forces on the consumption of electricity and that address changes in the number, type, and efficiency of electrical end-uses.

(b) An assessment of technically feasible improvements in the efficient use of electricity, including load management, as well as currently employed and new policies and programs needed to obtain the efficiency improvements.

(c) An assessment of technically feasible generating technologies including renewable resources, cogeneration, power purchases from other utilities, and thermal resources (including the use of combustion turbines to utilize better the existing hydro system).

(2003 Ed.)

## APPENDIX Q

